

KATHY HOCHUL Governor

### MARIE THERESE DOMINGUEZ Commissioner

JANICE A. McLACHLAN
Chief of Staff and General Counsel

# NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUEST FOR PROPOSALS OPERATION OF THE REGION 10 TRANSPORTATION MANAGEMENT CENTER (TMC) Contract #C038048

#### Initial Information for Submittal

- A. Please note the following **Dates and Deadlines**:
  - a. March 13, 2023: Mandatory Site Tour and Pre-Proposal Conference at 10:00am
  - b. **March 20, 2023**: Deadline for submission of questions about the RFP at 12:00 p.m. (Eastern Time)
  - c. April 4, 2023: Deadline for submission of Proposals at 12:00 p.m. (Eastern Time)
- B. To assist firms in preparing Proposals in response to this solicitation, a **Mandatory** Site Tour and Pre-Proposal conference will be held on March 13, 2023 at 10 a.m. A tour of the Region 10 TMC will be provided followed by a general review of the solicitation. Specific questions regarding the solicitation may be answered during the Pre-Proposal Conference part of the day. No questions are permitted during the Site Tour. However, to assist us in preparing for the meeting we wish to receive any questions you may have, in writing, by the close of business on March 8, 2023.
- C. Potential proposers MUST pre-register no later than 12:00 pm on March 9, 2023 by emailing the names of all attendees to the Designated Contact stipulated in Section 1.4. Each firm is limited to two (2) attendees.
- D. Complete Proposals are to be submitted to the Designated Contact stipulated in Section 1.4.



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### NEW YORK STATE DEPARTMENT OF TRANSPORTATION RFP RESPONSE FORM

## Contract No. C038048 – OPERATION OF THE REGION 10 TRANSPORTATION MANAGEMENT CENTER (TMC)

Please review this RFP, complete the following information, and email to the NYSDOT Designated Contact at the email address below, by the earliest date practical.

| We <u>DO</u> intend to submit a Proposal                           |           |
|--|-----------|
| We <b>DO NOT</b> intend to submit a Proposal for the following rea | isons:    |
|  |           |
|  |           |
|  |           |
| Proposer Name:   |           |
| Address:   |           |
| City, State:   | Zip Code: |
| Typed Name and Title:  |           |
| Telephone:   |           |
| Email Address:   |           |
| Signature:   | Date:     |
|  |           |

Please email the completed form to <a href="mailto:Patricia.Kappeller@dot.ny.gov">Patricia.Kappeller@dot.ny.gov</a>

# NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUEST FOR PROPOSALS OPERATION OF THE REGION 10 TRANSPORTATION MANAGEMENT CENTER (TMC) Contract No. C038048

## CONSULTANT TECHNICAL AND MANAGEMENT PROPOSAL/SUBMITTAL SUBMISSION CHECKLIST

#### Part I – Technical and Management Proposal/Submittal

| #1 Electronic copy of Part I in Adobe PDF format submitted via the NYS mySend |  |
|---|--|
| Managed File Transfer program to the Designation Contact                      |  |
| Signed Cover Letter on official business letterhead                           |  |
| Table of Contents identifying each major section and page numbers             |  |
| Narrative Description   |  |
| Firm Experience   |  |
| Complete and Submit Attachment #12: Past Project Reference Form               |  |
| Key Personnel Experience  |  |
| Approach, Scope of Services, Schedule   |  |
| Organization and Staffing   |  |
| Transition  |  |

# NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUEST FOR PROPOSALS OPERATION OF THE REGION 10 TRANSPORTATION MANAGEMENT CENTER (TMC) Contract No. C038048

#### CONSULTANT COST AND ADMINISTRATIVE PROPOSAL/SUBMITTAL SUBMISSION CHECKLIST

#### Part II - Cost and Administrative Proposal/Submittal

|   | #1 Electronic copy of Part II in Adobe PDF Format submitted via the NYS mySend    |
|---|---|
|   | Managed File Transfer program to the Designated Contact                           |
| □ Required Cost Proposal – Attachment #15 Mod #1 in Microsoft Excel Forma |   |
|   | Complete and submit online certification or hard copy of Vendor Responsibility    |
|   | Questionnaire   |
|   | Complete and submit Attachment #2: Consultant Information and Certification Form  |
|   | Complete and submit Attachment #3: Form AOR Acknowledgement of Receipt            |
|   | Complete and submit Attachment #4: Procurement Lobbying Law Forms                 |
|   | Complete and submit Attachment #6: Non-Collusive Bidding Certification            |
|   | Complete and submit Attachment #7: Vendor Assurance of No Conflict of Interest or |
|   | Detrimental Effect  |
|   | Complete and submit Attachment #10: DBE Participation Information Form            |
|   | DBE Certificates for DBE Certified Prime Consultant and Proposed DBE Certified    |
|   | Subconsultants  |
|   | Complete and submit Attachment #10a: DBE Subconsultant Participation Solicitation |
|   | Log   |

## NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUEST FOR PROPOSALS

## OPERATION OF THE REGION 10 TRANSPORTATION MANAGEMENT CENTER (TMC) Contract No. C038048

#### **Table of Contents**

#### Contents

| 1. | Iı        | ntroduction   | 1           |
|----|-----------|---|-------------|
|    | 1.1       | Purpose   | 1           |
|    | 1.2       | Background  | 1           |
|    | 1.3       | Minimum RFP Responsiveness  | 1           |
|    | 1.4       | Designated Contact  | 2           |
|    | 1.5       | RFP Modifications   | 2           |
| 2  | C         | Civil Rights Requirements   | , <b></b> ∠ |
|    | 2.1       | Disadvantaged Business Enterprise Participation Requirements  | , 4         |
|    | 2.2<br>Ow | Minority and Women-Owned Business Enterprise and Service-Disabled Veterand Business Enterprise Participation Requirements |             |
|    | 2.3       | Diversity Practices   | 4           |
|    | 2.4       | Title VI Assurance  | 5           |
|    | 2.5       | Equal Employment Opportunity  | 4           |
| 3  | P         | roject and Contract Objectives  | 6           |
|    | 3.1       | Project Objectives  | <i>(</i>    |
|    | 3.2       | Contract Objectives   | <i>(</i>    |
|    | 3.3       | Definitions and Acronyms  | <i>6</i>    |
|    | 3.4       | Contract Term and Rate Adjustments  | 7           |
| 4  | S         | cope of Services  | <u>9</u>    |
|    | 4.1       | Tasks   | 9           |
|    | 4.2       | General Conditions  | 9           |
|    | 4.3       | Organization and Staffing   | 12          |
|    | 4.4       | Deliverables  | 19          |
| 5  | P         | roposal Content and Format  | 20          |
| 5. | 1         | Technical and Management Proposal/Submittal   | 20          |
|    | 5.2       | Cost and Administrative Proposal/Submittal  | 24          |
| 6  | C         | Criteria for Evaluation of Proposals  | 29          |

|   | 6.1   | General   | 29  |  |
|---|---|---|-----|--|
|   | 6.2   | Technical and Management  | 29  |  |
|   | 6.3   | Cost  | 31  |  |
|   | 6.4   | Written Technical Clarifications/Re-Score                                 | 31  |  |
|   | 6.5   | Best & Final Offer (BAFO)   | 31  |  |
|   | 6.6   | Proposal Withdrawal   | 31  |  |
|   | 6.7   | Final Best Value Determination  | 31  |  |
|   | 6.8   | Consultant Selection Recommendation and Tentative Contract Award          | 32  |  |
| 7 | Adı   | ninistrative Specifications   | 33  |  |
|   | 7.1   | Electronic Submission   | 33  |  |
|   | 7.1   | State's Rights  | 33  |  |
|   | 7.2   | Consultant Responsibility When Proposing Former NYSDOT Employees          | 34  |  |
|   | 7.3   | Method of Payment   | 35  |  |
|   | 7.4   | Information for Selected Consultant(s)                                    | 35  |  |
|   | 7.5   | Inquiries and Information   | 37  |  |
|   | 7.6   | Protest Procedures  | 37  |  |
|   | 7.7   | Tentative Schedule of Key Events  | 37  |  |
| 8 | Att   | achments  | 38  |  |
| A | ttachn  | nent 1: Draft Contract  | 39  |  |
| A | ttachn  | nent 2: Consultant Information and Certification                          | 107 |  |
| A | ttachn  | nent 3: Form AOR Acknowledgement of Receipt                               | 110 |  |
| A | ttachn  | nent 4: Procurement Lobbying Law Compliance                               | 111 |  |
| A | ttachn  | nent 5: Consultant Disclosure Legislation Forms A&B                       | 113 |  |
| A | ttachn  | nent 6: Non-Collusive Bidding Certification                               | 115 |  |
| A | ttachn  | nent 7: Vendor Assurance of No Conflict of Interest or Detrimental Effect | 118 |  |
| A | ttachn  | nent 8: Executive Order 177 Certification                                 | 120 |  |
| A | ttachn  | nent 9: Executive Order No. 16 Certification                              | 121 |  |
| A | ttachn  | nent 10: DBE Participation Information                                    | 122 |  |
| A | ttachn  | nent 10a: DBE Subcontractor Participation Solicitation Log                | 123 |  |
| A | ttachn  | nent 11: Solicitation Log Instructions                                    | 124 |  |
| A | ttachn  | nent 12: Past Project Reference Form                                      | 128 |  |
| A | Attachment 13: Contract Job Title Descriptions & Qualifications |   |     |  |
| A | ttachn  | nent 14: Scope of Services Detailed Task Descriptions                     | 156 |  |
| A | ttachn  | nent 15: Cost Proposal Workbook Mod #1                                    | 171 |  |

| Attachment 16: RFP Modifications             | 171 |
|--|-----|
| Attachment 17: Staffing Requirements Mod #1  | 171 |
| Attachment 18-49 – Site Specific Attachments | 171 |



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# NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUEST FOR PROPOSALS OPERATION OF THE REGION 10 TRANSPORTATION MANAGEMENT CENTER (TMC) Contract No. C038048

#### 1. Introduction

#### 1.1 Purpose

The New York State Department of Transportation ("NYSDOT" or "The Department" or "The State") has issued this Request for proposals (RFP) to select a qualified consultant to provide personnel, in conjunction with NYSDOT staff, to operate the electronic traffic and information management systems at its Transportation Management Center (TMC) known as INFORM (Information FOR Motorists), on Long Island, NY, which covers Nassau, Suffolk, and Queens Counties. The purpose is to maintain the existing 24/7/365 operations of INFORM.

#### 1.2 Background

INFORM is an electronic traffic information and management system covering over 320 centerline miles of roadways on Long Island, NY. The system has been in daily operation since 1987.

The main INFORM Traffic Management Center (TMC) is located at 140 Nicon Court, Hauppauge, NY 11788. Additionally, INFORM has satellite back up at Republic Airport in Farmingdale, NY. A dedicated data communications network links the INFORM control center with the various field installations which include, but are not limited to: equipment mounted in roadside cabinets, arterial intersection traffic controllers and signals, ramp traffic controllers and signals, permanent and portable Variable Message Signs (VMS), travel time signs, vehicle detectors, Closed Circuit Television Cameras (CCTV), etc.

In summary, the operation of the system includes, but is not limited to monitoring, surveillance, and controlling of the following:

- Approximately 220 Overhead Variable Message Signs (VMS)
- Over 375 Closed Circuit Television Cameras (CCTV)
- Approximately 1,1300 Arterial Traffic Signals
- Approximately 90 Ramp Meters
- Approximately 150 Portable VMS, portable CCTVs, portable vehicle detectors
- Thousands of Loops, Radar, Video Image, Acoustic Detectors and TRANSMIT Readers

The area covered by INFORM main east-west and north-south corridors consisting of:

- The Long Island Expressway (1495)
- Northern State Parkway (908G)
- Southern State Parkway (908M)
- Sunrise Highway (NY27)
- Hempstead Turnpike (NY24)
- Meadowbrook State Parkway (908E)
- Wantagh State Parkway (908T)
- Sagtikos State Parkway (908K)
- Grand Central Parkway (GCP)
- Jericho Turnpike (NY25)
- Veterans Memorial Highway (NY454)
- Seaford Oyster Bay Expressway (NY135)
- Nesconset Highway (NY347)
- State Route 25A
- State Route 25B
- State Route 231
- State Route 27A
- State Route 106/107
- State Route 110
- State Route 112
- State Route 878 (Nassau Expressway)
- Various other roadways encompassed in the boundaries below

The current western boundary of the corridor is the Queens Midtown Tunnel in Queens and runs eastward through Nassau County and to the east end of Suffolk County.

#### 1.3 Minimum RFP Responsiveness

Any Proposer that does not provide <u>ALL</u> the following **by the Proposal Submission Deadline** will be determined to be non-responsive and will be removed from further consideration (prior to the technical evaluation of Proposals).

- 1. Part I: Technical and Management Proposal/Submittal
  - Cover Letter
  - Table of Contents
  - Narrative Description
  - Firm Experience
  - Attachment 12: Past Project Reference Form
  - Key Personnel Experience
  - o Approach, Scope of Services, Schedule
  - Organization and Staffing
  - Transition
- 2. Part II: Cost and Administrative Proposal/Submittal

- Attachment 15: Cost Proposal Workbook Mod #1 (Microsoft Excel Format)
- Complete and submit online certification or hard copy of Vendor Responsibility
   Questionnaire
- Attachment 2: Consultant Information and Certification Form
- Attachment 3: Form AOR Acknowledgement of Receipt
- Attachment 4: Procurement Lobbying Law Forms
- Attachment 6: Non-Collusive Bidding Certification
- Attachment 7: Vendor Assurance of No Conflict of Interest or Detrimental Effect
- Attachment 10: DBE Participation Information Form
- DBE Certificates for certified DBE Prime Consultant and proposed Certified DBE Subconsultants
- Attachment 10a: DBE Subconsultant Participation Solicitation Log AND Goal Attainment Letter

#### 1.4 Designated Contact

Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can be made only to designated contact persons. The Department's Designated Contact for this Procurement is:

Primary Contact:

Patricia Kappeller New York State Department of Transportation Office of Contract Management 50 Wolf Rd, 6<sup>th</sup> Floor Albany, NY 12232 (518) 457-2600

Email: Patricia.Kappeller@dot.ny.gov

**Secondary Contact:** 

Matt Bromirski New York State Department of Transportation Office of Contract Management 50 Wolf Rd, 6<sup>th</sup> Floor Albany, NY 12232 (518) 457-2600

Email: Matt.Bromirski@dot.ny.gov

The above-named persons, as the Department's Designated Contacts shall be the Department's only points of contact and sources of information for this procurement.

#### 1.5 RFP Modifications

If necessary, NYSDOT will issue Modifications to modify conditions or requirements of this RFP. Proposers are advised to visit the NYSDOT website:

(https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities) regularly to

check for Modifications. The final Modification will be posted on NYSDOT's website not later than seven (7) calendar days prior to the Proposal Due Date. If an additional Modification is required within the seven (7) calendar days, the Proposal Due Date shall be revised such that there will be seven (7) calendar days from the final Modification to the Proposal Due Date.

#### 2 Civil Rights Requirements

#### 2.1 Disadvantaged Business Enterprise Participation Requirements

While not indicative of a Proposer's individual merit (technical excellence, Proposer's ability, experience, etc.), NYSDOT encourages the participation of certified Disadvantaged Business Enterprises (DBEs) in its solicitations. The level of DBE participation will be relevant to the process of selecting Proposals that will achieve the overall goals of the Department. Please visit the New York Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via <a href="https://nysucp.newnycontracts.com">https://nysucp.newnycontracts.com</a>.

For this specific procurement, NYSDOT has established a DBE participation goal of 12.85% Meaningful participation by either a prime consultant who is certified as a NYSUCP DBE or inclusion of subconsultant(s) who is/are certified as a NYSUCP DBE count towards the DBE participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

- Result in a product or service distinguishable from the Prime Consultant's product or service or be a part of the services provided by the Prime Consultant;
- Be for scope of service elements which can be and are completely performed, supervised, and managed by the DBE consultant; and/or
- Perform significant tasks which can be considered commercially marketable.

Interested Proposers should verify their attainment of the above established DBE participation goal by completing Attachment 10: DBE Participation Information and submitting the DBE Certificates for Prime Consultants and proposed Subconsultants. To count towards the Department's DBE goal, a firm offering DBE participation must be currently certified by the NYSUCP DBE Directory. If the Proposal does not meet the 12.85 percent DBE participation goal, the firm must provide evidence of a good faith effort by completing Attachment 10a: DBE Subconsultant Participation Solicitation Log.

Additionally, if the Proposer does not meet the specified goal, the Proposer must provide a Goal Attainment Explanation Letter explaining why the Proposer was unable to meet the DBE participation goal (in full or if partially), which serves to substantiate the Proposer's good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should, at a minimum, address the following factors: the Proposer's method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

The above forms and letter must be included in Part II: Cost and Administrative Proposal/Submittal. Firms are advised to refer to Section 6 for the procedure by which NYSDOT will follow in evaluating a firm's proposed DBE participation.

## 2.2 Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business Enterprise Participation Requirements Not Applicable

#### 2.3 Diversity Practices

Not Applicable

#### 2.4 Title VI Assurance

The New York State Department of Transportation (NYSDOT), in accordance with Title VI of the Civil Rights Act of 1954, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23, Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written solicitation, request for proposal, or invitation for bid, that it will affirmatively insure that in any contract entered unto pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for award.

#### 2.5 Equal Employment Opportunity

In accordance with New York State Executive Order 162, issued on January 9, 2017, the Consultant shall provide workforce utilization reports in accordance with RFP Attachment 1, Draft Contract.

#### **3** Project and Contract Objectives

#### **3.1 Project Objectives**

The objective of this project is to provide operations services at the INFORM Traffic Management Center (TMC) in NYSDOT Region 10.

#### 3.2 Contract Objectives

To enter into one (1) contract with a responsive, responsible consultant to operate, manage, direct, supervise, maintain and administer the TMC systems and facilities at the INFORM Traffic Management Center (TMC) in NYSDOT Region 10.

#### 3.3 Definitions and Acronyms

| 511NY    | New York State's official website/phone app for traffic and travel |  |
|----------|--|--|
|          | information  |  |
| AG       | Attorney General   |  |
| AOR      | Acknowledgement of Receipt   |  |
| ATIS     | Advanced Traveler Information System                               |  |
| ATMS     | Advanced Transportation Management System                          |  |
| AVL      | Automated Vehicle Location   |  |
| BAFO     | Best and Final Offer   |  |
| CCTV     | Closed Circuit Television  |  |
| CIN      | Consultant Identification Number                                   |  |
| Claris   | Statewide Video Distribution System utilized by NYSDOT             |  |
| CPV      | Clean Pass Vehicle   |  |
| CSSWeb   | Consultant Selection System web application                        |  |
| CUF      | Commercial Useful Function   |  |
| DBE      | Disabled Business Enterprise                                       |  |
| EO       | Executive Order  |  |
| FEIN     | Federal Employer Identification Number                             |  |
| FHWA     | Federal Highway Administration                                     |  |
| HELP     | Highway Emergency Local Patrol                                     |  |
| HOV      | High Occupancy Vehicle   |  |
| HR       | Human Resources  |  |
| ICS      | Incident Command System  |  |
| IMC      | INFORM Maintenance Contractor                                      |  |
| INFORM   | INformation FOR Motorists  |  |
| ISO      | Insurances Services Office   |  |
| IT       | Information Technology   |  |
| ITS      | Intelligent Transportation Systems                                 |  |
| MPT      | Maintenance & Protection of Traffic                                |  |
| NLT      | No Later Than  |  |
| NOAA     | National Oceanic and Atmospheric Administration                    |  |
| NWS      | National Weather Service   |  |
| NY ALERT | New York Alert   |  |

| NYCDOT     | New York City Department of Transportation                                 |
|------------|--|
| NYS        | New York State   |
| NYSDOT     | New York State Department of Transportation                                |
| NYSUCP     | New York State Unified Certification Program                               |
| OpenReach  | OpenReach is an incident management system designed by CoVal Systems, Inc. |
| OSC        | Office of the State Comptroller  |
| OTJ        | On The Job   |
| OVMS       | Overhead Variable Message Signs  |
| PLL        | Procurement Lobbying Law   |
| PPI        | Producer Price Index   |
| PM         | Project Manager  |
| PVMS       | Portable Variable Message Sign   |
| QA/WC      | Quality Assurance/Quality Control  |
| R10        | Region 10 – Long Island  |
| RFP        | Request for Proposals  |
| SFS        | Statewide Financial System   |
| SHR        | Standard Hourly Rate   |
| SOP        | Standard Operating Procedures  |
| SPT        | Special Coordination Team  |
| STICC      | Statewide Transportation Information & Coordination Center                 |
| TIMED      | An electronic system that uses EZPass readers to determine travel time     |
|            | for traffic management purposes  |
| TMC        | Transportation Management Center   |
| TransAlert | Transportation Alert   |
| TRANSCOM   | Transportation Committee   |
| TRANSMIT   | An electronic system that uses EZPass readers to determine travel time     |
|            | for traffic management purposes  |
| TSMO       | Transportation Systems Management and Operations                           |
| TTI        | Travel Time Initiative   |
| UULS       | Underground Utility Locating Services                                      |
| VMS        | Variable Message Sign  |
| WEA        | Weather Group  |
| WO         | Work Order(s)  |
| WTA        | Winter Traveler Advisory System – A component of 511NY                     |
| WZTC       | Work Zone Traffic Control  |

#### **3.4 Contract Term and Rate Adjustments**

NYDOT estimates that the work for the successful consultant will commence on **August 1, 2023**. The base term or duration of the contract is three (3) years. The contract may be extended for up to two (2) one-year periods upon written agreement of both parties and approval of the Office of the State Comptroller and FHWA.

If the contract is extended for the optional years, the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 3%, whichever is lower, will be used as a basis for adjusting the hourly rates/lump-sum deliverable amounts. The rate adjustment will be effective **August 1, 2026** and is calculated using the previous **April** index, using Series ID PCU5413—5413—(Architectural, engineering and related services: <a href="http://data.bls.gov/timeseries/PCU5413--5413--?data\_tool-XGtable">http://data.bls.gov/timeseries/PCU5413--5413--?data\_tool-XGtable</a>). If at any time the above Index Series ID is discontinued or becomes unavailable, the State reserves the right to implement a comparable Index.

An example of the rate adjustment calculation is as follows (all numbers and titles used are form illustrative purposes only):

| Staff Title 1/1/2022-12/31/2022 Billing Rate | \$9.00/hour |
|--|-------------|
| October 2022 PPI Index (PCU5413—5413)        | 132.1       |
| October 2021 PPI Index (PCU5413—5413)        | 130.0       |
| Index Point Change                           | 2.1         |
| Divided by Previous Index                    | 130.0       |
| Percent Change, rounded to the nearest tenth | 1.6%        |
| Staff Title 1/1/2023-12/31/2024 Billing Rate | \$9.14/hour |

If the actual start date of the contract is substantially different than the above estimated date, then the effective date for the rate adjustment will be similarly changed.

NYSDOT reserves the right to negotiate a lower rate adjustment than stated above for the two (2) additional one-year extensions.

#### 4 Scope of Services

#### 4.1 Tasks

Detailed descriptions of tasks can be found in **Attachment 14: Scope of Services Detailed Task Descriptions.** 

- Task 1 Direction, Supervision and Administration of the TMC
- Task 2 System Operation
- Task 3 System Administration and Hardware/Software Support
- Task 4 Operations and Administration of the Highway Emergency Local Patrol (HELP) and the Parkway Tow Contracts
- Task 5 Roadwork Information and Lane Closure Coordination
- Task 6 Coordination of Police Services in Work Zone and Automated Work Zone Enforcement
- Task 7 Field Support Technical Services
- Task8- Weather Forecasting and Reporting
- Task 9 811 Underground Utility Locating Services Coordination
- Task 10 Critical Transportation Incident Support Services
- Task 11 –Training and Updating of Manuals
- Task 12 Transition

#### 4.2 General Conditions

- **4.2.1** The following general conditions shall apply to the scope of services for the operation of the TMC except where noted:
  - To provide a positive work atmosphere on the Operations floor and equal compensations for Operations staff, the Systems Operators IV, III, II, I and System Operator 1 – Trainee shall be employed by a single firm (either the Prime Proposer or Subconsultant)
  - The TMC operates under Standard Operating Procedures (SOPs), guidelines, and policies. The Consultant staff shall conform to these procedures, guidelines, and policies.
  - c. The cost of providing secretarial services for typing of correspondence, reports, and records shall be included in the fully loaded straight time hourly rates and fully loaded overtime hourly rates for the contract job titles in Attachment 15: Cost Proposal Workbook Mod #1.
  - d. From time-to-time the State may upgrade software and/or hardware utilized in the TMC. Upon request of the State, the Consultant shall allow time during normal working hours for the State to work on upgrading said systems.
  - e. The Consultant shall participate in post-incident debriefings as called upon by partner agencies or other agencies involved in managing a major traffic incident or planned event, to determine whether existing operating procedures should be changed. This work may also include travel to meetings away from the TMC.

#### 4.2.2 Facilities

- a. NYSDOT shall provide office space, computers, telephones and services, heating, air conditioning, lighting, internet connection, electric power, and basic office supplies at the TMC for the official business required to operate the TMC at no cost to the Consultant. Any additional office supplies required for the Consultant to manage their own administrative activities shall be borne by the Consultant, e.g., reproduction of Consultant employee handbooks.
- b. Consultant staff required to execute the duties of the Contract shall occupy space at the existing TMC.
- c. In the unlikely event that the TMC needs to be evacuated and is not habitable for periods of time, TMC staff will be required to report to an alternate location. In addition, at times TMC operators may have to work at an alternate site to support NYSDOT Incident/Event Management. If an alternate work site becomes necessary, the site and all necessary facility costs and equipment will be provided by the State at no cost to the Consultant. The following alternate sites have been identified as likely alternate locations. However, actual alternate sites may vary depending on availability at the time of need.

#### Potential Alternate Region 10 – Regional Transportation Management Centers

- Equipment Management Office Central Islip
- Republic Airport Farmingdale, NY

Consultant staff assigned to the TMC shall use the TMC (as defined in Section 1.1) as their official workstation and shall not be reimbursed for any expenses associated with travel to and from that TMC. If the TMC is not habitable, the alternate site described above shall become the official workstation(s), as applicable. Staff travel expenses to the new workstation are not eligible for travel reimbursement.

- d. Temporary staff assignments to an alternate non-official workstation may occur. Alternate workstations will be in the boundaries of the region. If staff are assigned to an alternate work location, the new work location will become their official workstation for the period of reassignment. Staff travel locations to the new workstation are not eligible for travel reimbursement.
- e. Any additional space the Consultant needs in addition to the designation workspace at the TMC is the responsibility of the Consultant at no additional cost to the State.

#### 4.2.3 Coordination with Others:

A critical element of the successful operation of the TMC is the development of a professional environment along with building upon trusted relationships with all external and internal partners who have a role in the response and management of traffic incidents on any given day. Additionally, the responsibility of the TMC has expanded greatly over the years to serve as a key player in emergency operations, including facilitating NYSDOT's response. Along with this, the ability of the operations and technical staff to perform these tasks on a professional level has amplified. Accordingly, the Knowledge, Skills, and Abilities required of the Operators to perform these duties have also increased. NYSDOT anticipates that these expectations will

continue to grow as systems advance and NYSDOT becomes more reliant on technology solutions to improve traffic operations.

- a. This Contract requires a close working relationship between the Consultant and State personnel. The Consultant and State, working together, will refine policies for the operation of the TMC, keep inventory records, as well as maintain & build relationships with all partners.
- b. The Consultant staff shall be required to cooperate and communicate with NYSDOT, State Police, County Sheriff, First Responders, and several outside agencies and firms. This includes, but is not limited to, other police agencies, firms engaged in gathering and disseminating traffic information, NYSDOT staff, other consultants and contractors performing roadwork activities, and contractors engaged by the State to provide various services in accordance with standard policies and procedures.
- c. Independent contractors may be retained by the State to service or install electronic equipment in the TMC and/or at remote locations. These contractors will be present in the TMC only as necessary for the performance of their work. Consultant personnel at the TMC may be required to provide operational assistance to these contractors. Assistance will be provided within the extent of normal duties (i.e., Consultant personnel will not be asked to accomplish tasks that are beyond the scope of their normal role).
- d. Consultant staff at the TMC <u>shall not</u> respond to media inquiries. All media communications shall go through the NYSDOT designee.
- e. The TMCs routinely receive calls from partner agencies as well as NYSDOT Regional Office & Maintenance facilities. Operators shall transcribe the received messages, then transfer the information via phone, email, and other appropriate methods to the appropriate or designated staff at the respective agencies in accordance with TMC SOPs and NYSDOT policies.

#### 4.2.4 System Hardware and Software

- a. NYSDOT will provide, support, and maintain all ITS and ATMS field and system hardware and software used by the TMC at no cost to the Consultant.
- b. The Consultant shall adhere to all appropriate NYSDOT equipment usage policies and procedures. These include, but are not limited to internet usage, CCTV usage and VMS messaging.
- c. System hardware and software changes may be implemented by others during the term of the Contract. These include updating the systems to accommodate roadway changes, ITS expansion to other roadways or any new operating systems at the TMC. The changes are not expected to adversely impact the work of the operations staff at the TMC.
- d. The System Operators will be required to assist in traffic data collection for system performance or troubleshooting using manual and automated data collection and surveillance features of the TMC systems.
- e. The Consultant will assist NYSDOT with upgrading the system configuration, ensure that the system is being property maintained, and updating inventory records of system equipment. The Consultant will assist NYSDOT with refining policies for the

operation of the system, ensure that the system is being properly maintained, and keep inventory records of system equipment. NYSDOT personnel will instruct the Consultant staff daily regarding the accomplishment of these tasks.

#### 4.3 Organization and Staffing

**Please refer to Attachment 17: Staffing Requirements Mod #1** for a consolidation of the staffing requirements detailed below.

#### 4.3.1 Staffing Responsibility

- a. The TMC currently utilizes specific staff titles are used to define roles and responsibilities. Staff title descriptions and minimum qualifications are detailed in Attachment 13 Contract Job Titles, Duties, and Qualifications. The associated tasks are listed in Section 4.1 and Attachment 14 Scope of Services Detailed Task Descriptions.
- b. Key personnel are staff that perform a critical role at the TMC. As such, these individuals will report directly to the NYSDOT TMC Director and are expected to be available for emergencies 24/7/365. The Consultant shall have an action plan to addressed planned and unplanned absences for these staff to ensure that critical systems remain operational.
- c. All TMC stationed staff, except for the Project Manager and the System Engineer, shall reside in the counties of Suffolk, Nassau, Queens, or Brooklyn.
- d. Proposers are required to submit a fully loaded straight time hourly rate and a fully loaded overtime hourly rate for every title listed Attachment 17: Staffing Requirements as presented in Attachment 15: Cost Proposal Workbook, Mod #1.

#### 4.3.2 TMC Staffing Levels and Schedule

- a. Full and Part-Time Employee Requirements for System Operators: The Operators serve as a critical role in ensuring the TMC operates effectively and consistently at all hours of the day. As such, it is required that a minimum of 70% of the System Operator Staff be appointed as full-time employees. All System Operator Staff must be direct employees of a single firm (either the Prime Proposer or a Subconsultant). The Department recognizes that part-time employees fill a specific void in the development of a schedule that adequately covers the shifts outlined in Attachment 17: Staffing Requirements Mod #1. The requirement to employ 70% of the System Operators as full-time direct employees is intended to advance growth and reliability of the operations staff within the TMC.
- b. For the purposes of this Contract, a full-time System Operator is defined as one who has a recurring schedule of at least 32 hours per week, excluding vacations, personal time off, sick time, etc.
- c. The TMC operates 24/7/365 in accordance with Attachment 17: Staffing Requirements Mod #1. Proposers must base their submission on continuous operations of the TMC. NYSDOT may, at its option, reduce or increase the number of staff and/or working hours of staff for the operation of the TMC. The Consultant shall be paid for actual hours worked.

- d. The Consultant shall have a backup plan in place to adequately cover assignments and tasks, including after-hours emergencies, when staff is unavailable due to planned and unplanned absences.
- e. Staff may be required to work outside of their normal work hours.
- f. A System Operator III shall be assigned to each weekday A and B shift and, at a minimum, be available to work weekday C shift and all weekend shifts, if required. The official workstation for all titles except the Project Manager will be the TMC. The pay rate for all titles except the Project Manager shall be the fully loaded field rate.
- g. These schedules do not reflect shift-overlaps or meal/break periods. The Proposer shall use the parameters for staffing as outlined in this RFP. Work shifts are defined as follows, subject to change upon approval of the TMC Director or designee:
  - Shift A: 5:45am 2:15pm
  - Shift B: 1:45pm 10:15pm
  - Shift C: 9:45am 6:15am
- Actual start and stop times for each shift will be defined at the time of staff scheduling.
- Actual staffing hours (including breaks) by title must be approved by the NYSDOT TMC Director at the onset of work and a minimum of 2 weeks before a schedule change.
- j. Each shift shall be supported by a System Operator III. The System Operator III shall be available to provide assistance to the TMC staff for all shifts outside their normal working hours, by phone to provide assistance and guidance to TMC staff for all shifts. On occasion, it may be required that the System Operator III will need to return to the TMC to provide direct assistance. If a System Operator III must return to the TMC to replace a shift System Operator II or System Operator I for the entire shift or any remainder of a shift (e.g., scheduled Operator becomes sick), reimbursement for the System Operator III shall be at the lower Contract Job Title Rate. Reimbursement for time worked outside of normal scheduled hours shall be based on approved documentation as required by the NYSDOT TMC Director.
- k. Weekday morning/afternoon and evening shifts shall not transition during AM and PM core hours. Core hours including peak traffic hours are defined as follows:
  - Weekday AM Core Hours are 6:00am 10:00am
  - Weekday PM Core Hours are 3:00pm 7:00pm
- I. Individual shifts greater than 9 hours per day per System Operators are discouraged but not restricted. At times, staff may be required to work extra hours to accommodate immediate changes in schedule (e.g., accommodate sick staff or major incidents). It is understood that small adjustments to work schedules are necessary on occasion in order to provide 24/7/365 coverage.
- m. The Consultant shall only be reimbursed for actual hours worked by staff. Time off for meals, vacation or sick are not reimbursable. Any cost associated with employee benefits shall be included in the fully loaded straight time rates and fully loaded overtime rates.

- n. Any staff working more than 6 continuous hours must have a scheduled meal/rest period worked into their schedule.
- o. These periods shall be referenced to as breaks and shall be no less than 30 minutes per shift.
- p. Breaks shall not occur during peak hours, at the beginning of a shift or the end of a shift. Breaks cannot be used to offset tardiness or to shorten the workday. Breaks are not considered working hours and are not reimbursed. All Break times must be approved by the NYSDOT TMC Director through scheduling approvals. The Consultant must ensure adequate coverage for operations tasks while staff is taking a meal/rest break. All System Operator breaks shall be scheduled so that only one System Operator is on break at a time, e.g.., shifts with 3 System Operators must have 2 System Operators at all times, 4 System Operators must have 3 System Operators at all times, etc.
- q. All staff assigned to the TMC are expected to have regular work hours defined. Staff shall begin and end work at the Start and End times of their regular work hours. Time charged shall be in 15-minute increments which begin at the start of the hour.
  - Staff who arrive early for their shift shall only be reimbursed for their time worked from the beginning of their scheduled Start Time
  - Staff who arrive late for their shift shall only be reimbursed for their time worked beginning at the next 15-minute interval from their scheduled start time.
  - Staff who remain on-duty beyond their regular End time will only be reimbursed for the time worked up to the scheduled End time. Exceptions to this may be approved by a supervisor to ensure adequate response to ongoing incidents and TMC operations. Compensation for these time extensions shall be rounded down to the nearest 15-minute interval.
  - Staff who leave early from their shift shall only be reimbursed for their time worked, rounded down from their scheduled End time to the nearest 15minute interval.

Examples: Employee's regular hours are 08:00am – 4:00pm

- Employee clocks in at 07:38am
  - If early start time was approved by a supervisor, then the start time would be rounded up to the nearest 15-minute interval and would be 7:45am; else it would be 08:00am
- Employee clocks in at 08:16am
  - Start time is rounded up to the nearest 15-minute interval and would be 08:30am
- Employee clocks out at 4:35pm
  - If late end was approved by a supervisor, then the end time is rounded down to the nearest 15-minute interval to 4:30pm; else it would be 4:00pm
- Employee clocks out at 3:58pm

- End time would be rounded down to the nearest 15-minute interval and would be 3:45pm
- During some holiday periods, special events, and/or emergency conditions, greater level of staffing may be required. If NYSDOT deems that additional Consultant personnel are necessary to operate during these periods, the Consultant shall provide additional staff through utilization of schedule changes, additional hours, or extra personnel.
- Holiday Reduced Staffing Adjustments: Due to historically low traffic volumes on the following holidays, the minimum staffing requirements may be reduced as approved by the TMC Director:
  - New Year's Day, President's Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day
- Shift Hand-Off Overlap a formal hand-off during shift change is a critical process in TMC operations. The hand-off report is a vital tool that provides real-time information pertinent to situational awareness amongst the System Operators. 15 minutes shall be built into the beginning and end of each System Operator's shift to ensure a smooth transition between shifts. Reimbursement for this Overlap time shall be made at appropriate fully loaded straight time hourly rate of fully loaded overtime rate, if applicable.

#### 4.3.3 Employee Performance

- a. Staff development, performance, and retention is critical to efficient and effective operations. The Consultant shall provide an employee Performance Plan that includes staff development, training probation, performance evaluations, counseling and disciplinary processes for al titles including subconsultants. The Performance Plan must clearly state the Consultant's company policy regarding performance improvement, counseling, and disciplinary steps. The Performance Plan shall include actions to be taken to assist staff development and performance improvement and, if necessary, to address chronic poor performance. The Performance Plan shall include performance evaluations on all Consultant and Subconsultant employees twice annually. The execution and content of the evaluation criteria must be approved by NYSDOT Management at the onset of the Contract but can be adjusted with mutual occurrence between the Consultant and the NYSDOT TMC Director. Completed performance evaluations must be submitted to the NYSDOT TMC Director for his /her approval within one week of the evaluation.
- b. All employees must meet and maintain NYSDOT performance standards. If an employee is not meeting standards, the Consultant must immediately act to rectify the deficiencies. Reoccurrence or continuance of poor performance shall result in performance penalties.
- c. Consultant shall provide a training plan for new System Operator skill development to the NYSDOT TMC Director for approval within 30 calendar days of Notice to Proceed. The Performance Plan shall, at a minimum, include the method used for training (classroom, mentor based or other), specific learning goals, a system to demonstrate mastery, and schedule for completion. It is expected that a portion of the employee training will be on-the-job, including job shadowing of a System Operator III/IV.

- d. Other internal or external training necessary to aid in employee development shall be borne by the Consultant and is not reimbursable. This includes, but is not limited to, company HR required training, communications training (written or oral), computer training, etc.
- e. New staff in training shall be paid at the System Operator I Trainee fully loaded straight time hourly rate and fully loaded overtime hourly rate. NYSDOT may require that reimbursement for Any Staff requiring additional training to address documented deficiencies be paid at the System Operator I Trainee fully loaded straight time hourly rates and fully loaded overtime hourly rates until they have satisfactorily demonstrated mastery of the necessary skills. The Department shall reimburse the Consultant for training a new System Operator I for no more than 100 hours of on-the-job training, including job shadowing of a System Operator III/IV.

#### 4.3.4 Penalties

- a. Staff Vacancy
  - NYSDOT requires Key Personnel to be available at the start of the Contract term. If the Key Personnel positions are vacant for any portion of the first 30 calendar days after the effective date of the Notice to Proceed then, at NYSDOT's discretion, the Consultant will be charged \$10,000 for each vacant position. Additionally, if any Key Personnel fails to perform in the manner required by the Contract within 30 calendar days after the effective date of the Notice to Proceed the, at NYSDOT's direction, the Consultant will be charged \$10,000 for each non-performing Key Personnel.
  - Minimum staffing levels as described in Section 4.3.2 are necessary to ensure that the TMC adequately performs all operations and other tasks. However, at the start of the Contract, the Consultant is provided a 30-calendar day grace period, starting from the Notice to Proceed, to mobilize non-key staffing resources. During this period, the Consultant must ensure that 24/7/365-day coverage is provided for Operations tasks by qualified candidates but is not bound by the minimum staffing level requirement in Section 4.3.2. After the 30-calendar day grace period non-key personnel staffing levels must comply with the minimum staffing levels in Section 4.3.2. If the Consultant has not met the minimum staffing levels with qualified staff after the initial 30-calendar day grace period, the penalties set forth below shall apply. Penalties are applied for each calendar day, past the 30-calendar day grace period, the position is vacant.
  - If after the initial 30-calendar day resource mobilization grace period, the Consultant must replace any member of their Staff, the Consultant shall have 30 calendar days from the date of the vacancy to submit a qualified candidate, for approval, to the NYSDOT TMC director. The proposed candidate shall meet the requirements of the position being filled as defined in Attachment 13 Contract Job Titles, Duties and Qualifications. In the event the Consultant is unable to submit a qualified, ready, willing, and able candidate within 30 calendar days, then, at the NYSDOT's discretion, the penalties set forth below shall apply. Penalties are applied for each calendar day past the 30-calendar day grace period, the position is vacant.

• The determination that a candidate is "qualified" is the sole discretion of NYSDOT. If a NYSDOT rejects a candidate, charges will resume accruing at the time the Consultant is notified of such rejection. The 30-day clock does not reset and continues from the initial vacancy date. Once a candidate has been approved by NYSDOT, the consultant should finish all necessary steps to hire the candidate within 1 week. The candidate shall start their position in training no more than two weeks after approval unless authorized by the NYSDOT representative. All penalties specified below hall be an offset against future Consultant invoices.

#### b. Performance Standards

- Upon written notification from NYSDOT that the Consultant staff is not meeting NYSDOT performance standards, meeting employee performance requirements, or the Consultant is not implementing the employee Performance Plan required in Section 4.3.3 above, the Consultant shall have 30 calendar days to rectify the situation (notice to cure). After 30 calendar days, if, in the opinion of NYSDOT, any staff member is not performing satisfactorily, NYSDOT may apply the penalty set forth in Table below to each unsatisfactory performing staff member. Penalties are applied for each calendar day, following the written notice from NYSDOT and will continue until the deficiency has been addressed. If such unsatisfactory performance results in the Consultant's removal of an employee from the Contract, then the Consultant shall not receive the 30-calendar day grace period provided above.
- If a Consultant's staff member engages in conduct that poses a threat to the health, safety, or welfare of colleagues, NYSDOT employees, other individuals on or around the TMC premises, or the traveling public (as a result of their job function), or if a staff member engages in illegal conduct on or around the TMC premises, NYSDOT shall have the discretion to deny the Consultant's staff member access to the facility and such staff member may be excluded from participating in, or working on, the Contract.

#### c. Penalties

| Staff Type    | Penalty   |
|---------------|---|
| Key Staff     | At NYSDOT's discretion, the Consultant shall be charged |
|               | \$1,500/day/staff member                                |
| Non-Key Staff | At NYSDOT's discretion, the Consultant shall be charged |
|               | \$1,000/day/staff                                       |

#### 4.3.5 Communications

a. The Consultant shall provide personnel with cellular phones in accordance with Attachment 17: Staffing Requirements Mod #1. Staff required to have cellular phones are expected to respond to call/text/emails from TMC operators, Consultant, NYSDOT Management and TMC partners within a reasonable amount of time (including off hours). In most cases staff should respond within 15 minutes of receiving a communication request. The intent of this provision is to ensure the appropriate staff are available to provide support and emergency backup, as required in Section 4.3.2.

#### 4.3.6 Background Checks

a. All staff are required to undergo and pass a State Police criminal background investigation. Fees and other costs associated with the background investigations shall be borne by the Consultant. Background investigations for all new employees shall begin within one week prior to start of employment.

#### 4.3.7 Continuity of Operations and Hiring

- a. Transitioning from one consultant to another can be complicated given the nature and complexity of the 24/7/365 operations. Proposers are encouraged to rehire/retain all existing TMC operations staff where practical. Staff retention is at the discretion of the Consultant but must be approved by the NYSDOT TMC Director.
- b. To be considered for re-hire/retention or new appointment, candidates should meet or exceed the minimum qualifications for the job title they are applying for. All staff candidates, new or returning, must be approved by the NYSDOT TMC Director.

#### 4.3.8 Human Resource Management

a. The cost of providing administrative services for human resource management and functions including, but not limited to, hiring, interviewing, background investigations, typing of correspondence, reports, and record keeping shall be provided at no additional cost.

#### 4.3.9 Scheduling

- a. The Consultant shall provide adequate staff coverage for TMC management, operations, and support during TMC hours of operation throughout the term of the Contract, including all holidays, during state emergency and extraordinary incidents or events. Increased levels of staffing may be required by NYSDOT during select holiday periods, special events, and/or emergency conditions.
- b. The Consultant shall ensure that staffing levels are adequate to cover sick and vacation leave, as well as provide adequate breaks as defined by NYS labor law.
- c. During the term of the Contract, it is anticipated that the overall functions of the TMC may increase. If NYDOT deems that additional Consultant personnel are necessary to operate the expanded function, the Consultant shall provide extra personnel as long as the additional staff does not cause the Contract to exceed the maximum amount payable. If additional funding exceeding the maximum amount payable is necessary, additional staff shall be added through the execution of a Contract Amendment to be approved by the NYS Attorney General and Office of the State Comptroller. In the event a Contract Amendment is necessary for this Contract, the Contract Title Job rates shall be consistent with the agreed upon Contract Title Job Rates in the Contract.
- d. If at any time during the term of the Contract and for any reason, an individual has to perform the tasks of another individual at a lower Contract Job Title, then the Consultant shall be reimbursed at a lower Contract Job Title Rate. For example, if a System Operator III has to fill in for a System Operator I, then the Consultant shall be reimbursed at the System Operator I fully loaded straight time rate and/or fully loaded overtime hourly rate as long as the System Operator III performs the System

Operator I tasks. However, at no time will the reverse happen. For example, if a System Operator II has to fill in for a System Operator III, the Consultant shall be reimbursed at the System Operator II fully loaded straight time hourly rate.

#### 4.3.10 Additional Requirements

- a. NYSDOT may, in the future, elect to augment NYSDOT staff.
- b. The Proposer is required to enter the fully loaded straight time hourly rate and fully loaded overtime hourly rate for the titles in Attachment 15 Cost Proposal Workbook Mod #1 that may be added throughout the term of the contract by a Contract Amendment.

#### 4.4 Deliverables

All task specific deliverables are defined in **Attachment 14: Scope of Services Detailed Task Descriptions**. All records/reports must be in Microsoft Word, Excel, Adobe PDF, or another format acceptable to NYSDOT. Documents must be available when requested by NYSDOT or automatically shared with NYSDOT in electronic format via email or managed file transfer (for larger sized documents). Should NYSDOT want to review records pertaining to this contract at the Consultant's office, NYSDOT shall be given access to those files upon reasonable notice.

The Consultant shall maintain all records at a location accessible by NYSDOT staff and in an electronic format acceptable to NYSDOT. Per the contract, all records produced under this contract are property of NYSDOT. Should the work between NYSDOT and the Consultant be terminated, all records shall be turned over to NYSDOT or its designated recipient.

The Consultant shall supply timesheet records with every payment invoice. Timesheets shall show actual times of day worked. I.e., 7:45AM to 11:45AM, 12:15PM to 4:15PM.

#### 5 Proposal Content and Format

For the purposes of evaluation, each Proposal must be submitted in two (2) parts. Part I shall consist of the Technical and Management Proposal/Submittal. Part II shall consist of the Cost and Administrative Submittal/Proposal. Each part of the Proposal must be complete in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management Proposal/Submittal can be evaluated strictly based on merit. Cost information must not be included in the Part I: Technical and Management Proposal/Submittal. The Proposal should follow the format listed below.

**Note:** NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law. If an offerer believes information included in their Proposal is confidential and proprietary, they should identify those pages of their Proposal which contain such information as "Confidential and Proprietary". Additionally, offerers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. This information is to be provided in the Cover Letter.

**Note:** Cost information is <u>NOT</u> to be included in Part I: Technical and Management Proposal/Submittal. Technical information is <u>NOT</u> to be included in Part II: Cost and Administrative Proposal/Submittal.

#### 5.1 Technical and Management Proposal/Submittal

Part I shall include the following sections:

#### 1. Cover Letter indicating:

Name, address and phone number of the Proposer, and the name, title, address, email, and telephone number of the person(s) who may be contacted during the procurement process. Provide a brief description of the proposed approach, work effort, and resulting product. Confidential and proprietary information should also be identified and addressed in this section. **Not to exceed one (1) double sided page each.** 

#### 2. Table of Contents

#### 3. Narrative Description

Provide a brief description of the important issues involved in the implementation of this effort. Include enough substantive details to demonstrate an understanding of NYSDOT project objectives and familiarity with applicable laws, rules, etc.

4. Firm Experience (Both Prime Proposer and Subconsultants)
The qualifications and prior experience of the Proposers are of great importance to
NYSDOT. Demonstrated, successful experience in managing and coordinating multiple,
interdisciplinary contracts/projects in Transportation Operations Management, Military
Dispatching, or other operations dispatching is preferable. Relevant experience for all

Prime and proposed Subconsultants is to be presented in a narrative format. **Maximum 4 pages**.

The Technical and Management Proposal/Submittal shall include a narrative demonstrating the relevant experience of the firms (both Prime Proposer and Subconsultants) to be assigned to this Contract in the following areas:

#### **Operations & Complex Projects**

- Managing and coordinating complex projects comprised of diverse tasks;
- Managing operations or dispatching contracts. Should include a listing of prior experience for which the Prime Proposer has been the prime operational consultant for any or all of the past five (5) years; include relevant work experience, a description of the goals and objectives, titles of staff, and experience reacting to day-to-day routine situations as well as experience in reacting to emergency situations (weather or otherwise); and
- Written and oral communication and technical writing for revising policy and procedural guidance documentation and manuals.

#### Communications/Coordination

 Public relations, communication, and coordination with other agencies (emergency responders, law enforcement, municipalities, emergency operations centers).

#### Condition Reporting and Asset Management

 Condition monitoring (weather, construction activity and work-zone monitoring, and other activities); data collection and reporting; performance measurement and asset management.

#### Employee Development and HR

- Human resource management including managerial and administrative support to off-site, 24/7/365 operations personnel;
- Recruiting and retaining qualified staff, employee development, employee performance and quality control and assurance; and
- Training (including computer, ATMS or similar applications, operations dispatching, effective communication, office applications and other).

#### Technical

- Firm's ability to provide "in-house" operational and technical support services to the Operations Manger and System Engineers/Administrators;
- Computer-assisted control and operation of information and resource management tools (Advanced Transportation Management Systems (ATMS) or similar systems); and

 System networking, software applications (including ATMS or similar system), electronic and communications equipment management, troubleshooting and repair.

#### Past Performance Evaluation and References

- In addition to the narrative requirements above, provide a listing of the Prime Proposer and Subconsultant's prior or current projects within the last five (5) years which are relevant to this project. Provide a brief summary of the firm's function under each of the projects and how it relates to this project. Indicate personnel who have worked on these projects that will be assigned to this Contract, identify their area(s) of expertise. Complete and submit Attachment 12: Past Project Reference Form for each project listed. Include names, addresses, phone numbers, and email addresses for points of contact with the listed client.
- Prime Firms and all proposed Subconsultants who have performance evaluations processed through the NYSDOT Consultant Performance Program (PERF) are required to submit their most recent evaluation.

NYSDOT reserves the right to request information from any source so named.

#### 5. Key Personnel Experience

The Project Manager's resume is required to be submitted with the Technical and Management Proposal/Submittal. The resume shall address prior experience in the General Function, Organization Relationships, and Qualifications as described in Attachment 13 Contract Job Titles Descriptions and Qualifications. Experience in TMC operations, Transportation Operations Management, 911 Center Operations, Military Dispatching, or other operation dispatching support should be emphasized in the resume.

The Key Personnel (as identified in Attachment 13: Contract Job Titles, Duties and Qualifications) proposed by the Proposer are an important factor in the evaluation of the Proposal. Thus, NYSDOT expects that the personnel proposed will be available at the start of the contract term. As a result, any Key Personnel proposed by the Proposer that does not perform the required work under the contract for the initial 30-calendar days after the effective date of the Notice to Proceed may, at NYSDOT's discretion, result in a \$10,000 charge per Key Personnel as liquidated damages.

In addition, if at any time during the term of the contract a member of the Consultant's Key Personnel needs to be replaced, the Consultant shall have 30 calendar days to submit a qualified candidate (at the same or greater level of experience and expertise) to NYSDOT for approval.

#### 6. Approach, Scope of Services and Schedule

Describe the approach for implementing the Scope of Services outlined in Section 4 and Attachment 14 of this RFP. The approach should be based on the scope of services on these tasks. Describe the approach for managing and delivering the advertised 12.85% DBE goal, including the Commercially Useful Function (CUF) the DBE firm(s) would be providing. **Not to exceed 10 pages**.

Describe, in detail, the plan for accomplishing the following:

- a. Providing material/administration support to coordinate the overall effort to provide the required services outlined in Section 4 and Attachment 14 of this RFP, in an effective and cost-efficient manner. Include a detailed description by Task number. If subconsultants are proposed, describe the need, indicate the arrangements, and detail how coordination will be achieved.
- b. Providing Employee Development/Performance/Recruitment/Retention, (cross) training, and scheduling (assigning and substituting system operators and dispatchers to ensure adequate system coverage); how staff will be assigned to the various shifts (i.e., what provisions will be made for coverage during vacations, illnesses, and absences); and the specific actions to minimize personnel turnover.
- c. Describe the communication and coordination with other NYSDOT Regions, outside agencies and partners including, but not limited to, local government officials, agencies, law enforcement, and offices of emergency management, etc. Additionally, interactions with firms and organizations engaged in gathering and disseminating traffic information and the media should also be included.
- d. Describe the approach to Information Technology security, configuration management, system architecture, ITS Systems Management, IT and ITS systems documentation, asset management, accountability, and system connectivity.

#### 7. Organization and Staffing

Provide an organization chart for the project showing the Contract Job Titles (Attachment 13) and names of, at a minimum, the Project Manager, and any other Key Personnel known at the time of proposal submission that will be working on this effort and responsible for the scope of services.

It is not required that incumbent staff be retained. However, it is desirable to retain the institutional and working knowledge of key members of the team. Additionally, it is understood that it may be difficult to recruit incumbent staff prior to submitting a Proposal. As such, it is not necessary to negotiate with or gain employment acceptance from any incumbent staff prior to the submission of Proposals. If the Proposer intends to recruit incumbent staff, those individuals should be clearly identified in the organization chart along with the intention to recruit if designated for a contract award.

Provide a Staffing Plan and Management that describes:

• The organization of the Proposing team to enable operating and managing the TMC.

- Details on how the TMC will be self-sufficient and capable of dealing with situations/scenarios, providing effective and efficient delivery of services, while meeting project goals.
- How minimum staffing levels will be met throughout the term of the contract (attempts of recruiting incumbent personnel can occur after the notice of designation)
- The plan for phasing project personnel into the effort. The Consultant Project
  Manager shall serve as the primary contact with the NYSDOT Project Manager
  and is responsible for the performance of all key personnel, production staff,
  and support staff assigned to the contract, as well as contractual matters on the
  Consultant's side.
- The level of any type of interaction with NYSDOT.

#### 8. Transition

Describe all actions and processes required, if awarded a contract, that the Consultant will undertake to progress a smooth transition as incoming firm. Describe all actions and processes required for transition out to a new consultant at the term of this Contract, if not awarded a future contract for the continuing operations. (Not to exceed 1 page)

#### 5.2 Cost and Administrative Proposal/Submittal

Part II shall consist of the Cost and Administrative Proposal/Submittal

#### 1. Cost Proposal Section

NYSDOT requires that all cost information be presented using the RFP-provided Microsoft Excel Workbook (See Attachment 15: Cost Proposal Workbook Mod #1) in both hard copy and electronic copy on flash drive. The accuracy of the information entered into the Cost Proposal Workbook is the sole responsibility of the Proposer. When completing the Cost Proposal Workbook, Proposers shall follow these instructions:

#### a. Salaries

- System Operators Fully Loaded Straight Time Hourly Rate and Fully Loaded Overtime Hourly Rate shall include the following minimum base hourly rates for years 1-3 of the Contract:
  - System Operator IV = \$40.00
  - System Operator III = \$32.00
  - System Operator II = \$27.00
  - System Operator I = \$24.00
  - System Operator Trainee = \$20.00
- Other Contract Job Titles are not bound by the minimum rates above.
- Overtime shall not be used to provide full staffing to accommodate vacation or sick leave. The Consultant shall be compensated at the fully loaded straight time hourly rates regardless of their Overtime Category for Staff utilized for this

- purpose; unless otherwise approved, in writing, by NYSDOT. Approved overtime is reimbursable by the categories shown in Attachment 17: Staffing Requirements Mod #1, and only if the Proposer has a policy to pay overtime compensation.
- The State will only pay an overtime premium (up to 50% of the base hourly rate) for all Category "C" designated Contract Job Titles after the employee has worked more than forty (40) hours during the calendar week at the TMC. Holiday and other paid time off cannot be counted towards the forty (40) hour minimum.
- The State will only pay the fully loaded straight time hourly rates for all Category "B" designated Contract Job Titles for all overtime hours regardless of the number of hours worked.
- Category "A" Contract Job Titles will not be paid any overtime wages regardless
  of the number of hours worked.
- Complete the salary schedule for all contract job titles proposed and their proposed base hourly rates. Enter any additional titles, if applicable, and their proposed base hourly rates. A separate salary schedule shall be completed for the Prime Consultant and any proposed subconsultants. Enter the Indirect Cost Rate (Overhead) and the Fixed Fee (Profit) for the Prime Consultant and any proposed subconsultants.

If proposing a fully loaded rate the calculation is:

A = Direct Labor

B = Overhead Cost = Overhead Rate \* Direct Labor

C = Fixed Fee = Fixed Fee % \* (A+B)

Standard Hourly rate (SHR) = Fully Loaded Rate

SHR = A + B + C

- b. The one-time and recurring costs the Proposer provides within the Cost Proposal Workbook shall include ANY and ALL one-time and recurring fees, charges or costs for the duration of the contract, including, but not limited to:
  - i. All direct and indirect costs, all overhead, fees, and profit
  - ii. Labor, parts, shipping, material, and equipment costs
- iii. Emergency Work
- iv. Maintenance services as specified herein
- v. Repairs and replacements of major or minor parts as necessary
- vi. Administrative, reporting or other requirements of the consultants contract overhead work.
- vii. Travel costs, parking fees, and any other ancillary fees including permits, licenses, insurance, etc.
- viii. Services not explicitly stated in this solicitation, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted.

- c. Terminology used in the Cost Proposal Workbook for products and services must be consistent with the terminology used in Part I: Technical and Management Proposal/Submittal.
- d. All worksheets included in Attachment 15: Cost Proposal Workbook must be completed for the response to be considered complete and responsive.
- e. Proposers shall only make entries in the colored cells. Changes should not be made to the Cost Proposal Workbook format or formulas. **Proposers shall not attach any additional or qualifying information unless specifically instructed to do so.**
- f. Direct Non-Salaries

A direct non-salary cost schedule shall list the items of direct non-salary costs (out-of-pocket expenses) expected to be incurred in the performance of the project for the Prime Consultant and any proposed subconsultants. Travel, meals, and lodging reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. All travel MUST receive prior approval of the TMC director or designee. The latest state and nationwide rates are available at the following website:

http://www.gsa.gov

#### 2. Administrative Section

a. Cover Letter, indicating:

Name, address and phone number of the Proposer, and the name, title, address, email, and telephone number of the person(s) with authority to execute the contract and who may be contacted during the procurement process. Confidential and proprietary information should also be identified and addressed in this section. Not to exceed two (2) pages.

#### b. Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to the responsive and responsible. All Proposers of contracts valued at \$100,000 or more, and subconsultants with services valued at \$100,000 or more shall be required to submit a Vendor Responsibility Questionnaire through the office of the State Comptroller at:

http://www.osc.state.ny.us/vendrep/index.htm and include a copy of the online certification, or include a hard copy of the completed Vendor Responsibility Questionnaire.

c. Acceptance of Contract Terms and Conditions

Proposers shall complete and submit Attachment 2: Consultant Information and Certification Forms, to indicate their acceptance of all terms and conditions contained in Attachment 1: Draft Contract. Attachment 2 requires the signatures of an official authorized to bind the Proposer to all provisions, a statement certifying that the Proposal shall remain valid for 365 days, a statement that the Proposer accepts the RFP's Scope of Services "as-is", and a statement, that if awarded the contract, the Proposer will comply with all requirements of the RFP, including all

attachments. Altering this form without the prior written approval of NYSDOT, is prohibited and may lead to the Proposal being deemed non-responsive and subsequently dismissed.

No exceptions to any of the draft contract terms and conditions will be entertained by NYSDOT. Conditional Proposals will be deemed non-responsive.

- d. Modification Acknowledgement Form Complete and submit Attachment 3: Acknowledgment of Receipt (AOR), indicating receipt of any Modifications and Q&A issued by NYSDOT.
- e. Procurement Lobbying Law (PLL)
   All Proposers should become familiar with NYSDOT's Procurement Lobbying Law Interim Guidelines and Procedures. The document it listed at:
   <a href="https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll">https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll</a> gandp v1.pdf

Filing the two required PLL forms is mandatory for all consultants in order to be considered for contract award. These forms are:

Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j(3) and §139-j(6)(b)

https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers affirmation and agreement form.pdf

Offerer Disclosure of Prior Non-Responsibility Determinations: <a href="https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer disclos prior non.pdf">https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer disclos prior non.pdf</a>

For additional information refer to Attachment 4: Procurement Lobbying Law Compliance.

- f. Non-Collusive Bidding Certification All Proposers shall complete and submit Attachment 6: Non-Collusive Bidding Certification.
- g. Vendor Assurance of No Conflict of Interest or Detrimental Effect
   All Prime Proposers and Subconsultants shall complete and submit Attachment 7:
   Vendor Assurance of No Conflict or Detrimental Effect.
- h. Civil Rights Participation
  Complete and submit Attachment 10: DBE Participation Information, DBE
  Certifications, and if applicable, Attachment 10a: DBE Subconsultant Participation

Solicitation Log and Goal Attainment Letter. Provide the legal names of all Certified DBE consultants (Prime and/or subconsultants).

Use Contract Number C038048 wherever requested in the forms. Per Procurement Lobbying Law of 2005 only the individuals identified as Designated Contacts in Section 1.4 of this RFP shall be contacted if you have any questions.

## 6 Criteria for Evaluation of Proposals

#### 6.1 General

Proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness, referenced in Section 1.3. Those which do not shall be deemed non-responsive and shall be removed from further consideration. As part of the pre-screening process, the proposed Civil Rights Participation percentages shall be reviewed. To count towards NYSDOT's participation goal, each firm must be currently listed in the NYSUCP (DBE) list of certified DBEs. If the proposed participation is less than the established goal in Section 2.6 the Proposer's evidence of Good Faith Efforts (Subconsultant Participation Solicitation Log) along with a Goal Attainment Explanation Letter will be reviewed. During the review, which will include verification of a Proposer's Good Faith Effort evidence, if it is determined by NYSDOT that the Proposer did not provide an acceptable Good Faith Effort, then the Proposal will be deemed non-responsive and will be removed from further consideration.

Proposals shall then be evaluated by the Department using a Best Value Method evaluation process based on the technical and cost criteria described below. Technical considerations are of greater importance than pricing considerations, however, price is a significant factor in the Department's evaluation of Proposals. Technical Proposals will be scored based on the information provided under Section 5.1 in accordance with the pre-established criteria listed in Section 6.2. The cost portion of Section 5.2 will be point scored in accordance with the pre-established criteria listed in Section 6.3.

Technical and Management Proposal/Submittal evaluation will be accomplished by a representative committee comprised, as appropriate, of technical, program and management personnel. Committee members will score each Proposal individually and then meet as a group to discuss the Proposals. Evaluators will be allowed to revise scores based on these committee discussions. Only Proposals determined to be technically acceptable and subject for contract award will be considered further and have their Cost Proposal included in the selection process.

Proposers responding to this RFP may be requested to clarify issues or to provide additional insights into their Proposal through written clarifications and/or technical interviews/demonstrations. If written clarifications are required to complete the technical evaluation of Proposals, evaluators will be allowed to revise their technical scores based on this clarifying information. Furthermore, the Department reserves the right to ask clarifying questions regarding each Cost Proposal (included in Part II: Cost and Administrative Proposal/Submittal) and DBE participation as well.

The Department reserves the right to request best and final offers from firms that are determined to be susceptible to contract award.

## 6.2 Technical and Management

The Technical and Management Proposal will be scored and will represent 70% of the total score for a Proposal. The major evaluation criteria are listed below:

- 1. Experience of Firm and Key Personnel (Up to 35 points)
  - a. Operations and Complex Projects (Up to 10 points)
    - Managing and coordinating complex projects
    - Managing operations or dispatching contracts
  - b. Technical (Up to 10 points)
    - Proposer/Subconsultant's ability to provide "in-house" operational and technical support services to Operations Manager and System Engineer/Administrators
    - Computer-assisted control and operations of information and resource management tools (ATMS systems or similar)
    - Quality, extent and relevance of experience in system networking, software applications (including ATMS), electronic and communication equipment management, troubleshooting and repair
  - c. Communications/Coordination (Up to 5 points)
    - Public relations, communications with the media, and coordination with other agencies
    - Communications, written, oral and technical
  - d. Condition Reporting and Asset Management (Up to 5 points)
    - Condition monitoring (weather, construction activity, and work-zone monitoring, and other activities); data collection and reporting, performance measurement and asset management
  - e. Employee Development and HR (Up to 5 points)
    - Human resource management including managerial and administrative support to off-site, 24/7/365 operations personnel
- 2. Approach to Scope of Services and Schedule (Up to 30 points)
  - **NOTE:** A Proposer shall be evaluated based upon the offered tasks/work proposed in the Consultant's scope of services as was requested in this RFP. Additional services or value-added work shall not be evaluated; however, any non-scope optional work items may be discussed with the selected consultant after designation of tentative contract award.
  - a. Approach to providing managerial/administrative support to coordinate the overall effort to provide the required services outlined in Section 4 and Attachment 17, in an effective and cost-efficient manner (Up to 8 points)
  - b. Approach to Employee Development/Performance/Recruitment/Retention, (cross) training, and scheduling (Up to 6 points)
  - Proposer's ability and approach to communication and coordination with other NYSDOT Regions, outside agencies and partners including, but not limited to, local government officials, agencies, law enforcement, and offices of emergency management (Up to 6 points)
  - d. Information technology, electronics, and communication technology approach to ensure high competency in staff to address system security, configuration

management, system architecture, ITS Systems Management, IT and ITS Systems documentation, asset management, systems and component troubleshooting, accountability, and system connectivity (Up to 5 points)

- e. Quality and reasonableness of the proposed Transition Plan (Up to 5 points)
- 3. Organization and Staffing (Up to 5 points)
  - a. Reasonableness of the organization's structure as it relates to carrying out tasks required by the Contract, including the proposed Staffing and Management Plan, and use of subconsultants.

#### 6.3 Cost

The Cost portion of Part II: Cost and Administrative Proposal/Submittal will be point scored and will represent 30% of the total score for a Proposal. The calculation of a cost score will be based on the following method:

- 1. The Proposal with the lowest overall total price will receive the full amount of points.
- 2. Proposals with higher overall total prices will receive proportionately lower Cost Proposal scores.
- 3. This point total will be calculated by dividing the lowest proposed Cost Proposal price by the Cost Proposal price of each Proposal, multiplied by the maximum weight for the Cost Proposal (30%).
- 4. Cost Proposal scoring results shall be used to determine which Proposals are to be shortlisted and/or susceptible to contract award. A final Cost Proposal score shall be calculated once all Cost Proposal evaluations have been completed.

# 6.4 Written Technical Clarifications/Re-Score

The Department reserves the right to seek written clarifications from firms submitting Proposals to assure a full understanding of their responsiveness to the Technical requirements. A Proposer may be required to provide written clarifications at any time during the Proposal evaluation process. Evaluators will be allowed to revise their Technical Proposal scores based on receipt and consideration of this clarifying information and follow-up committee discussions. Reasons for any score change shall be documented.

# 6.5 Best & Final Offer (BAFO)

The Department reserves the right to request a Cost Only Best and Final Offers (BAFO) from responsive proposers. Responsive Proposers will be allowed to submit a Cost Only or may opt to not submit a BAFO. The Department's Designated Representative shall make the necessary, appropriate adjustments to that Proposer's Cost Proposal evaluation.

# 6.6 Proposal Withdrawal

Should any firm withdraw their Proposal, the Department will remove that Proposals' technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining Proposers' technical and cost scores (without the withdrawn Proposers' information).

## 6.7 Final Best Value Determination

After evaluation of all technical information submitted by competing Proposers (i.e., initial written Technical Proposals, written clarifications, and possible BAFOs), the Department will add he weighted written Technical Proposal scores to the perfected Cost Proposal score to generate the tentative final best value score by Proposer. Proposers shall be ranked in Final Best Value score order (highest to lowest).

## 6.8 Consultant Selection Recommendation and Tentative Contract Award

Consultant selection and designation shall be forwarded to the applicable Department's Executive Manager(s) along with the evaluation process results. The selection shall recommend the top-ranked Best Value Consultant for tentative Contract award. The Executive Manager(s) will be asked to concur with the conclusion of the Proposal evaluation process and designate the Best Value Consultant based upon the results.

Should negotiations with the Best Value Consultant fail to produce an agreed upon contract(s), then the Department's Executive Management will designate tentative contract award to the next highest ranked Best Value Consultant. This process may repeat itself until acceptable contract(s) are consummated.

At the conclusion of the evaluation process, an announcement of the Department's designation(s) will be posted on the Department website. All Proposers shall be notified in writing regarding the results from the solicitation and will be offered an opportunity to hold a debriefing. Debriefing requests should be made to the Department's Designated Representative within 15 calendar days from the date of the designation notice. Further, it is expressly understood that this Request for Proposals does not commit the Department to award a contract, pay any costs incurred in the preparation of a Proposal to this request, or to procure or contract any services or supplies. Further, the Department shall have no obligation or liability whatsoever to the Consultant selected resulting from this solicitation unless and until a contract satisfactory to the Department is approved and executed by the Consultant and all necessary State officials.

# 7 Administrative Specifications

#### 7.1 Electronic Submission

Proposals shall be electronically submitted to NYSDOT Office of Contract Management via the NYS mySend.ny.gov managed file transfer program. Proposers shall send an email to <a href="mailto:Patricia.Kappeller@dot.ny.gov">Patricia.Kappeller@dot.ny.gov</a> expressing their intent to submit their Proposal electronically within 14 days of the proposal submission due date. NYSDOT Office of Contract Management will then send the Proposer an invitation to mySend so the Proposer can upload their RFP submission files to the mySend site. Acknowledgement of Proposal receipt via email shall be sent to the Proposer to confirm NYSDOT's successful receipt of electronically-submitted Proposals. Proposers are advised to provide ample time to address any technological errors prior to the Proposal submission deadline.

For the purposes of evaluation, each Proposal must be submitted in two (2) parts. Part I shall consist of the Technical and Management Proposal/Submittal. Part II shall consist of the Cost and Administrative Submittal/Proposal. Each part of the Proposal must be complete in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management Proposal/Submittal can be evaluated strictly on the basis of merit. Cost information must not be included in the Part I:

Technical and Management Proposal/Submittal. The Proposal should follow the format listed below.

Electronic submission file nomenclature:

- Part I Technical and Management Proposal/Submittal PDF Document:
   CO38066C038048 FirmName PartI.pdf
- Part II Cost and Administrative Proposal/Submittal PDF Document <del>C038066C038048</del> FirmName\_PartII.pdf
- Attachment 15 Cost Proposal Workbook Mod #1 Excel Document
   C038066C038048 FirmName Attachment15 Mod1.xlsx

## 7.1 State's Rights

All Proposals, upon submission to the Department, shall become its property for use as deemed appropriate. By submitting a Proposal, the Proposer covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. The Department attests to the following prerogatives regarding all Proposals submitted:

- 1. To accept or reject any or all Proposals;
- 2. To correct any arithmetic errors in any or all Proposals;
- To change the Proposal's due date upon appropriate notification to interested firms;
- 4. To eliminate any mandatory RFP requirement(s) or specification(s) unmet by all Proposers in the evaluation of received Proposals;
- 5. To adopt any or all of a successful Proposer's Proposal;

- 6. To negotiate milestone payments schedule and total cost, and contract terms and conditions with the selected Proposer prior to contract award only if it is in the best interest of the State to do so;
- 7. To disqualify a Proposer from receiving the award if such Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
- 8. To revise/amend any provision if this RFP by written notification to Proposer's, prior to Proposal submission;
- 9. To make inquiries, by means it may choose, into the Proposer's background or statements made in the Proposal to determine the truth and accuracy of all statements made therein;
- 10. To select and award the contract to the Proposer whose proposal represents the best value to NYSDOT'
- 11. Conduct contract negotiations with the next responsible Proposer, should NYSDOT be unsuccessful in negotiating with the selected Proposer; and
- 12. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other New York State agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

## 7.2 Consultant Responsibility When Proposing Former NYSDOT Employees

It is the Consultant's responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual's responsibility to comply with the Public Officer's Law.

The following procedure applies if either of the following criteria is met:

- It is two years or less between the date that the individual is proposed and the individual's date of separation from the State.
- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

## Procedure

- Before the Consultant proposes an individual, the individual must obtain an opinion from the New York State Commission on Ethics and Lobbying in Government (<a href="http://ethics.ny.gov">http://ethics.ny.gov</a>) that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the Consultant's office and available for review by NYSDOT if requested.
- Failure to obtain New York State Commission on Ethics and Lobbying in Government approval for an individual's participation in a project may jeopardize the firm's designation for that project.

## 7.3 Method of Payment

Payment for services provided under the Contract resulting from this RFP will be fixed for the duration of the Contract unless changed by an executed Contract Amendment. The Consultant will designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the contract.

Payment for services provided under this project shall be a Specific Hourly Rate reimbursement and compensation for actual non-salary costs incurred in the performance of the scope of services.

Requests for progress payments and final payments shall be made by the designated consultant on standard payment request forms (FIN-421). Use proper procedures for billing each deliverable. Submit a draft billing to NYSDOT's assigned Project Manager via the following sample electronic billing: <a href="https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions">https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions</a>. The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via email either with comments/corrections or with an approval to submit the final billing via signed hardcopy. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and standard NYS FIN 421 payment request form.

# 7.4 Information for Selected Consultant(s)

1. Registration with NYSDOT

Consultant firms entering into contracts with the New York State Department of Transportation (NYSDOT) as prime consultants, joint venture partners, or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb) by creating and registering an account to: 1) create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; 2) provide general firm information including, but not limited to, legal name, Federal Identification Number (FEIN), ownership type, DBE/MBE/WBE status, firm principals, and office(s) address information. All consultant firms participating in a potential Contract must be registered electronically with NYSDOT prior to that Contract being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the Contract.

Consultant Firm Registration instructions are available at: <a href="https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions">https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions</a>

Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb administrator at css@dot.ny.gov or by telephone at (51) 457-2600.

2. Registration with Statewide Financial System (SFS) Should this solicitation lead to a designation, the Prime consultant(s) will be required to electronically register with the Statewide Financial System (SFS) – if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The results of this process is an established SFS vendor number assigned to the Prime Consultant. If a firm has already registered in SFS in conjunction with another procurement, it will not likely need to be registered for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT's is doing business with. <a href="https://www.osc.state.ny.us/state-vendors">https://www.osc.state.ny.us/state-vendors</a>.

3. Consultant Employment Disclosure Requirements

Prime consultants should become familiar with the Consultant Employment Disclosure requirements, which went into effect June 19, 2006 at <a href="https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/contractor instr forms a b.pdf">https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/contractor instr forms a b.pdf</a>. The Consultant selected for this solicitation shall be required to complete "State Consultant Services — Contractor's Planned Employment" (Form A, Attachment 5) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the "State Consultant Services Contractor's Annual Employment Report" (Form B, Attachment 5) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15<sup>th</sup> of each year the contract is in effect.

## 4. Insurance Requirements

Please carefully read the terms and conditions of the draft contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this project that are contained in Article 13 of the draft contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

## 5. Contractor Tax Certification

Per section 5-a of the NYS Tax Law, all vendors selected for contracts exceeding \$100, 000 for the sale of goods or services must complete and submit Forms ST-220-CA and ST-220-TD (Contractor Certifications). The forms and instructions are available at: <a href="http://www.tax.ny.gov/pdf/current">http://www.tax.ny.gov/pdf/current</a> forms/st/st220ca fill in.pdf (Form ST-220-CA) and <a href="http://www.tax.ny.gov/pdf/current">http://www.tax.ny.gov/pdf/current</a> forms/st/st220td fill in.pdf (Form ST-220-TD).

6. Certification Form EO-177 (Attachment #8) In accordance with Executive Order No. 177, the successful Proposer will be required to certify that it does not have institutional practices that fail to address the harassment and discrimination of individuals based on their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or

other protected status under the Human Rights Law. Certification Form EO-177 will be

provided with the contract documents. The completed and signed certification must be returned with the firm's executed contract.

# 7. Certification Form EO-16 (Attachment #9)

In accordance with Executive Order No. 16, the successful Proposer will be required to certify they: (1) are not an Entity conducting business operations in Russia; (2) are not conducting, will not conduct, and will not engage any such company that conducts, commercial activity with (a) the Russian Government, and (b) commercial entities headquartered in Russia or with their principal place of business in Russia, in the form of contracting, sales, purchasing, investment, or any business partnership. Certification Form EO-16 will be provided with the contract documents. The completed and signed certification must be returned with the firm's executed contract.

## 7.5 Inquiries and Information

All questions concerning this solicitation must be directed only to the individual(s) specified in Section 1.4 of this RFP. The last date to submit questions for this solicitation is stated in Section 7.7 below. Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the NYSDOT website.

## **7.6 Protest Procedures**

The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via <a href="https://www.dot.ny.gov/main/business-center/consultants/general-info">https://www.dot.ny.gov/main/business-center/consultants/general-info</a>.

## 7.7 Tentative Schedule of Key Events

NYSDOT will attempt to adhere to the following tentative schedule with regard to processing this solicitation:

| RFP Release Date                | March 3, 2023                       |
|---------------------------------|-------------------------------------|
| Pre-Proposal Webinar/Conference | March 13, 2023                      |
| Question Submittal Deadline     | March 20, 2023                      |
| Question Response Deadline      | March 24, 2023                      |
| Proposal Due Date               | April 4, 2023                       |
| Recommendation & Designation    | Approximately End of April          |
| Contract Finalization           | Two weeks after designation         |
| Contract Award                  | Approximately 6-8 Weeks after       |
|                                 | Completion of Contract Finalization |

# 8 Attachments

## Attachment 1: Draft Contract

#### NEW YORK STATE DEPARTMENT OF TRANSPORTATION

## **COMPTROLLER'S CONTRACT NO.: C038048**

## PROJECT: OPERATION OF THE REGION 10 TRANSPORTATION MANAGEMENT CENTER (TMC)

This Contract made pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the Department of Transportation (hereinafter referred to as the "DEPARTMENT" or "NYSDOT") whose office is at 50 Wolf Rd, Albany, NY 12232, and

Consultant Firm Name
Consultant Firm Address
Consultant Firm Address

(hereinafter referred to as the "Consultant")

#### WITNESSETH:

WHEREAS, the DEPARTMENT desires the CONSULTANT because of its ability and reputation, to perform the services hereinafter mentioned upon the PROJECT which is fully described in SCHEDULE A and the CONSULTANT agrees to provide these services.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

#### ARTICLE 1 – PERFORMANCE OF WORK

The CONSULTANT shall perform all of the work described in SCHEDULE A and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this CONTRACT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this CONTRACT. The CONSULTANT'S Project Manager shall have the responsibility for the overall supervision and conduct the work on behalf of the CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described herein. Any change of key personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend the terms and

conditions of this CONTRACT to any other state agency in New York subject to the approval of all necessary state officials.

The CONSULTANT shall commence work no later than ten (10) calendar days after receiving notice to proceed from the DEPARTMENT.

## ARTICLE 2 – DOCUMENTS FORMING THE CONTRACT

The CONTRACT documents shall be deemed to include this AGREEMENT (including Exhibits), the provisions required by state and federal law to be inserted in the CONTRACT as set forth in Appendix A, Appendix A-1, Appendix B, Appendix C, Appendix D, Schedule A (including Exhibits), Schedule B (including Exhibits), the DEPARTMENT'S Request for Proposals (RFP, dated \_\_\_\_\_, including any modifications) incorporated by reference, and the CONSULTANT'S Proposal (dated \_\_\_\_\_, including any clarifications) incorporated by reference.

### ARTICLE 3 - ORDER OF PRECEDENCE

In the event of any inconsistencies between or among the provisions and contents of this CONTRACT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

- 1. APPENDIX A;
- 2. The provisions required by state and federal law to be inserted in the CONTRACT as set forth in APPENDIX A-1, APPENDIX B, APPENDIX C, and APPENDIX D;
- 3. This CONTRACT, including Signature Page, Notary Page, and Exhibits;
- 4. SCHEDULE A (including Exhibits);
- 5. SCHEDULE B (including Exhibits);
- 6. The STATE's Request for Proposals (including any modifications); and
- 7. The CONSULTANT's Proposal.

#### ARTICLE 4 – TERM OF THE CONTRACT

The CONSULTANT agrees to complete all work of this CONTRACT as required within a 36 month base term, which shall commence on August 1, 2023 and end on July 31, 2026. The CONTRACT may be extended for up to two (2) one-year periods as may be agreed by the parties to the CONTRACT and as approved by the Office of the State Comptroller (OSC).

#### ARTICLE 5 – MAXIMUM AMOUNT PAYABLE

Item I – The maximum aggregate amount payable by the STATE to the CONSULTANT hereunder for the performance and completion of the work is \$\_\_\_\_\_\_ unless increased by a CONTRACT AMENDMENT. It is understood and agreed that the STATE will only reimburse the CONSULTANT for approved costs incurred in the performance of authorized project tasks.

Item II – The CONSULTANT specifically agrees that the CONTRACT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose.

## **ARTICLE 6 – CONTRACT PAYMENT**

The CONSULTANT shall provide complete and accurate billing invoices to the DEPARTMENT to receive payment. Billing invoices submitted to the DEPARTMENT must contain all information and supporting documentation required by the CONTRACT, the DEPARTMENT and OSC. The Consultant shall supply timesheet records with every payment invoice. Timesheets shall show actual times of day worked. I.e., 7:45AM to 11:45AM, 12:15PM to 4:15PM. Payment for invoices submitted by the CONSULTANT shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as the "COMMISSIONER"), in the COMMISSIONER'S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices.

The CONSULTANT must enroll in the State Comptroller's ePayments system to authorize electronic payments and acknowledges that it will not receive payment on any invoices submitted under this CONTRACT if it does not comply with the State Comptroller's electronic payment procedures. Authorization instructions are provided on the State Comptroller's website at: <a href="https://www.osc.state.ny.us/state-vendors">https://www.osc.state.ny.us/state-vendors</a>. For assistance email: <a href="https://www.osc.state.ny.us/state-vendors">helpdesk@sfs.ny.gov</a>

#### ARTICLE 7 – PROVISION FOR PAYMENT

The STATE shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this CONTRACT:

Item I – Specific Hourly Rates of pay shown in SCHEDULE B, Exhibit \_\_\_, for employees assigned to this Project. The Specific Hourly Rates are not subject to audit, however, the number of hours charged is subject to audit. If the CONTRACT is extended beyond July 13, 2026, then all of the Specific Hourly Rates of pay shown in SCHEDULE B, Exhibit \_\_\_ are eligible for rate adjustments. They may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID PCU5413—5413) for the most recent 12 month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 3%, whichever is lower, all subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

Item II – Actual Direct Non-Salary Costs incurred in fulfilling the terms of this CONTRACT are subject to audit. Such costs may include, but are not limited to, those shown in SCHEDULE B, Exhibit \_\_\_. All reimbursement for travel, meals and lodging shall be made at actual cost paid

but such reimbursement shall not exceed the prevailing maximum rates established by the State Comptroller. All travel MUST be pre-approved by the TMC Director or designee.

Items purchased under this CONTRACT shall become property of the STATE at the completion of the work, or at the option of the STATE, appropriate value shall be established as a credit to the STATE.

## **ARTICLE 8 – PARTIAL PAYMENTS**

The CONSULTANT shall be paid in progress payments based on allowable costs incurred during the period in accordance with Article 7 of this CONTRACT.

The STATE will make payments to the CONSULTANT in accordance with Section 179(f) of the State Finance Law. Payments are subject to the approval of NYSDOT. Payments shall not be withheld unreasonably.

The CONSULTANT shall maintain and update once each month, if changes have taken place or are anticipated, the Project Schedule contained in SCHEDULE A.

The CONSULTANT shall inform the STATE and all subcontractors/subconsultants of the CONSULTANT'S schedule for submitting monthly vouchers to the STATE, said schedule shall by strictly adhered to by the CONSULTANT.

The CONSULTANT will not include any provisions in their subcontracts that would circumvent the intent of 49 CFR 26.29 to require the CONSULTANT to make partial payments to subcontractors/subconsultants within ten (10) calendar days after receipt of payment from the STATE.

All subcontractor/subconsultant vouchers received by the CONSULTANT at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the CONSULTANT does not have other costs to be billed for that period. The CONSULTANT shall inform the subcontractor/subconsultant of the date the voucher was submitted to the STATE and the amount included for the subcontractor/subconsultant.

## **ARTICLE 9 – FINAL PAYMENT**

Section 179 of the State Finance Law required the STATE to make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted. The STATE in accordance with the provisions of State Finance Law has determined that the STATE will require a sixty (60) calendar day audit period for final payments at which time the 30-calendar day interest-free period will commence. The CONSULTANT is required to make final payment to all subcontractors/subconsultants within ten (10) calendar days of receipt of final payment from the State.

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this CONTRACT or for any part thereof except as otherwise provided in the paragraph below.

The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and make such materials available at its office at all reasonable times during the term of this CONTRACT and for the period of time specified in Clause No. 10., "Records" of APPENDIX A, for inspection by the STATE, Federal Highway Administration (FHWA), or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

## **ARTICLE 10 – INSPECTION**

The duly authorized representatives of the STATE, and on Federally aided projects, representatives of the Federal Highway Administration (FHWA), shall have the right, at all times, to inspect the work of the CONSULTANT.

## **ARTICLE 11 – EXTRA WORK**

If the CONSULTANT believes that any work is, or may be, beyond the scope of the CONTRACT (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing of this fact prior to beginning any work. The notification shall include all information required by the DEPARTMENT. The STATE shall be the sole judge as to whether or not such work is in fact beyond the scope of this CONTRACT and constitutes extra work. No extra or additional work shall be started prior to written authorization from the STATE. The STATE shall be under no obligation to reimburse the CONSULTANT for any extra or additional work performed without the prescribed notification and authorization. The STATE will not allow fixed fee for any extra work undertaken without prescribed notification and authorization. In the event that the STATE determines that such work does constitute extra work, the STATE shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, a CONTRACT AMENDMENT providing the compensation and describing the work authorized shall be issued by the STATE to the CONSULTANT for execution after approval have been obtained from necessary STATE officials, and if required, from the Federal Highway Administration.

In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render the STATE all assistance required by the STATE. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this CONTRACT for the additional services above described, the STATE's directions shall be exercised by the issuance of a separate contract, if necessary.

## **ARTICLE 12 – CONSULTANT LIABILITY**

To the fullest extent permissible by law, the CONSULTANT shall indemnify and save harmless the STATE, and any municipality, public benefit corporation, railroad, and/or public utility whose property or facilities are affected by the work, from suits, claims, actions, damages, and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The CONSULTANT and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the STATE relative to the PROJECT from suits, claims, actions, damages, and costs involving personal injury and property damage arising from the CONSULTANT'S work under the CONTRACT during its prosecution and until the final acceptance thereof. The STATE may retain such monies from the amount due the CONSULTANT as may be necessary to satisfy any claim for damages recovered against the STATE, any municipality and/or public benefit corporation, railroad, or public utility affected by the work or the STATE relative to the PROJECT. The CONSULTANT'S obligation under this paragraph shall not be deemed waived by the failure of the STATE to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the CONTRACT, nor shall such obligation be deemed limited or discharged by the enumeration or procurement if any insurance for liability for damages imposed by law upon the CONSULTANT, Subconsultant or any municipality and/or public benefit corporation, railroad, or public utility affected by the work, or for any consultants working for the STATE. It is understood by the STATE and the CONSULTANT that the CONSULTANT'S Professional Liability/Errors and Omissions Policy required in the Article 13 -Insurance of this CONTRACT shall be utilized for claims involving the CONSULTANT'S professional negligence.

The CONSULTANT has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorney's fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation to indemnify in the foregoing paragraph does not extend to those suits, action, damages and costs of every name that arise out of this sole negligence of the STATE, or negligence of any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the STATE, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway, or structure or appurtenances and appliances thereof including moving, demolition and excavating connected therewith. Notwithstanding the foregoing, the parties being defended by the CONSULTANT may elect to join any action or tender their own defense, at their sole expense and discretion.

#### **ARTICLE 13 – INSURANCE**

The CONSULTANT shall procure, at its own sole cost an expense, and shall maintain in force at all times during the term of the CONTRACT including any extensions or renewals until satisfactory completion of all work under the CONTRACT, the policies of insurance covering all

operations under the CONTRACT whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) or better or approved by the DEPARTMENT. The DEPARTMENT may, at its sole discretion permit the placement of policies with a non-authorized carrier or carriers upon request by the CONSULTANT accompanies by the documentation required by 11 NYCRR §20.7 et seq., provided that nothing herein shall be construed to require the DEPARTMENT to accept insurance placed with a non-authorized carrier under any circumstances. The CONSULTANT shall deliver to the DEPARTMENT evidence of such policies as the DEPARTMENT deems necessary to verify that the required insurance is in effect. If policies are changed or canceled, the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

- 1. **Conditions Applicable to Insurance**. All policies of insurance required by this CONTRACT must meet the following requirements:
  - **A.** Coverage Types and Policy Limits. The types of coverage and policy limits required from the CONSULTANT are specified in Section 2, Insurance Requirements, below. General Liability insurance shall apply separately on a per-job or per-project basis.
  - B. Policy Forms. Except as may otherwise specifically provided herein or agreed in writing by the DEPARTMENT, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at a minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f of the ISO-GLC policy) or that remove or modify the "insured contract" exception to the employers liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subconsultants, are not acceptable. Policy forms must the provided to the DEPARTMENT upon request.
  - C. Certificates of Insurance/Notices. CONSULTANT shall provide a Certificate or Certificates of Insurance in a form satisfactory to the COMMISSIONER, before commencing any work under this CONTRACT. Certificates or transmittal correspondence shall reference the NYSDOT CONTRACT Number. CONSULTANT is strongly encouraged to transmit certificates and other materials concerning insurance coverage, reference the CONTRACT Number and the name of the CONSULTANT in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov.

New York State Department of Transportation Office of Contract Management 50 Wolf Rd, 6<sup>th</sup> Floor Albany, NY 12232 Unless otherwise agreed, policies shall be written so as to require that the policy will not be (a) canceled, (b) materially changed, or (c) permitted to expire or lapse for any reason except upon ten (10) calendar days prior written notice to the DEPARTMENT by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the DEPARTMENT, the CONSULTANT shall deliver to the DEPARTMENT within ten (10) business days of such a request a copy of or any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

- 1. Be in a form satisfactory to the DEPARTMENT. The ACORD 25 Certificate must be accompanied by an ACORD 855 "New York Construction Addendum" completed to indicate information about the liability insurance.
- Be signed and dated by an authorized representative of the insurance carrier or producer.
- 3. Disclose any deductible, self-insured retention, aggregate limit.
- 4. Refer to this CONTRACT by number on the face of the certificate.

If at any time during the term of this CONTRACT, it shall come to the attention of the DEPARTMENT that required insurance is not in effect or that adequate proof of insurance as not been provided, the DEPARTMENT may, at its option:

- 1. Direct the CONSULTANT to suspend work and not to re-enter the premises with no additional payment or extension of time due on account thereof, or
- 2. May withhold further contract payments in accordance with Partial Payments, Section §109-04 of the Standard Specification, or
- 3. Treat such failure as a breach or default of the CONTRACT.
- D. Additional Insureds. All insurance policies required by these specifications, except Workers' Compensation, NYS Disability and Professional Liability shall be endorsed to provide coverage to "The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees" with respect to any claim arising from the CONSULTANT'S activities. The endorsement shall be affected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 for a form(s) that provides equivalent coverage.
- **E. Primary Coverage**. The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the DEPARTMENT for any claim arising from the CONSULTANT'S work under this CONTRACT, or as a result of the CONSULTANT'S activities.

- **F.** Waiver of Subrogation. As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against **the State of New York/New York State Department of Transportation, its agents or employees**. To the extent that any of the CONSULTANT'S policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.
- **G. Policy Renewal/Expiration**. At least ten (10) calendar days prior to the expiration of any policy required by this CONTRACT, evidence of renewal or replacement policies of such insurance with terms no less favorable to the DEPARTMENT than the expiring policies shall delivered to the DEPARTMENT in the manner required for service of notice in Section C Certificates of Insurance/Notices above.
- H. Self-Insurance Retention/Deductibles. Consultants utilizing self-insurance programs are required to provide a description of the program for DEPARTMENT approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the CONTRACT documents of a particular project, the CONSULTANT or third-party administered insurance deductible shall be limited to the amount of the bid deposit of \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator or an approved risk management plan. The DEPARTMENT will not accept self-insured retention programs without security being posted to assure payment of both the selfinsured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expenses and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT'S deductible in a selfadministered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by the DEPARTMENT must be issued by a guarantor or surety with an A.M. Best Company rating of (A-) or better. If, at any time during the term of this CONTRACT, the DEPARTMENT, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention or any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.
- I. Waiver of Indemnities. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this CONTRACT. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.
- **J. Subconsultant's Liability Insurance**. In the event any portion of the work described in this CONTRACT is performed by an approved subconsultant, the insurance requirements

of this Article shall by incorporated into the subcontract agreement. Subconsultant insurance requirements shall include the requirements for Workers' Compensation, NYS Disability Benefits, Commercial General Liability, and if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. CONSULTANT shall require that Certificates of Insurance, meeting the requirements of the DEPARTMENT are provided to the DEPARTMENT documenting the insurance coverage for each and every subconsultant employed by them to do work under this CONTRACT.

- 2. **Insurance Requirements**. The types of insurance and minimum policy limits shall be as follows:
  - **a.** Workers' Compensation and Disability Insurance. As required by State Finance Law §142, the CONSULTANT shall maintain in force Workers' Compensation insurance upon forms required by or acceptable to the Workers' Compensation Board for all of CONSULTANT's employees. CONSULTANT shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.
  - b. Commercial General Liability Insurance. The CONSULTANT shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises of occasioned by reason of the operations of CONSULTANT. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of no less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:
  - i. Coverage for contractual liability by the CONSULTANT insured under an insured contract (including the tort liability of another assumed in a business contract).
  - ii. All insurance policies required by these specifications except Workers' Compensation, NYS Disability Benefits, and Professional Liability shall be endorsed o provide coverage to "The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees" using ISO Form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
  - iii. Products completed Operations Coverage, as provided in the General Liability Policy, or in certain instance through ISO Form CG 26 11 09 99 or suitable equivalent.
  - iv. Where contract work will be performed by unregistered off-road equipment, CONSULTANT shall provide documentation of a blanket Pollution Liability Policy, or an endorsement to cover short-term pollution events, ISO Form CG 04 33 10 01 or equivalent.

- v. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
- vi. Explosion, Collapse and Underground Hazards Coverage ("XCU") for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment.
- c. Special Protective and Highway Liability Policy. (applicable to any project where CONSULTANT is required to conduct field work where CONSULTANT controls the field location for the work) The CONSULTANT shall maintain, separate and apart from its umbrella policy, a policy issued to and covering the liability of the People of the State of New York, the State of New York, the Commissioner of the NYS Department of Transportation, and all employees of the NYS Department of Transportation, and any municipality in which the work is being performed, and public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, against damages that the insured may be held legally liable to pay for property damage, personal injuries, or death that is caused by any occurrence that takes place within any location where work is to be or is being performed by CONSULTANT, including at the location of any of the work. This should be ISO Form CG 00 14 12 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000 per occurrence and at least \$2,000,000 for each aggregate item.
- d. Commercial Automobile Insurance including liability and required coverage for New York. (applicable to any project where automobiles or other vehicles will be employed to complete the work). In the event that automobiles are used in connection with CONSULTANT'S business or operations with the DEPARTMENT, the CONSULTANT shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of CONSULTANT'S automobiles (including owned, hired and non-owned vehicles) on and around the project. This may be ISO Form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000 each accident.
- e. Umbrella or Excess Liability Insurance. The CONSULTANT shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent consultants, project-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of CONSULTANT or arising from automobile liability as described above. Such coverage shall be written on an ISO Occurrence Form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent

excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than \$5,000,000 per occurrence/aggregate.

f. Consultant's Risks. (applicable to all contracts) The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks including without limitation: (1) business interpretation, such as gross earnings, extra expense, or similar coverage, (2) personal property, and/or (3) automobile physical damage and/or theft. In no event shall the DEPARTMENT be liable for any damage to, or loss, of personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this CONTRACT, even if such loss is caused by the negligence of the DEPARTMENT.

## ARTICLE 14 - INTERCHANGE OF DATA

All technical data in regard to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this CONTRACT without expense to such other party.

## **ARTICLE 15 - DISPOSITION OF DATA**

At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. Or in the event that this CONTRACT is terminated for any reason, then, within ten (10) calendar days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material.

## **ARTICLE 16 – DAMAGES AND DELAYS**

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this CONTRACT. Such delays or hindrances, if any, shall be compensated for by extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its right under ARTICLE 9 of this CONTRACT.

## ARTICLE 17 – NOTICE OF BANKRUPTCY, VENUE, AUDITS

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under Bankruptcy Laws or a successor statute, this CONTRACT shall be treated as an executory

contract under 11 USC S365 of the Bankruptcy Laws or successor statute, and subject to assumption or reject by the debtor within the time permitted by law.

The CONSULTANT must immediately send written notice to the Office of Contract Management of the New York State Department of Transportation at its main office in Albany, NY and send all relevant pleading of the voluntary or involuntary filing of a Bankruptcy proceeding by the CONSULTANT, its subsidiary, its principals and officers or a related entity whether or not the CONSULTANT believes that any debt is owed to the STATE by final audit or otherwise.

The determination of any rights under this CONTRACT shall be adjudicated in a State or Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, NY.

The CONSULTANT agrees that the automatic stay under 11 USC S362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this CONTRACT.

#### **ARTICLE 18 – TERMINATION**

The STATE shall have the absolute right to terminate this CONTRACT, and such action shall in no event be deemed a breach of CONTRACT:

- If a termination is brought about for the convenience of the STATE and not as a result of
  unsatisfactory performance on the part of the CONSULTANT, final payment shall be made
  based on the actual work performed by the CONSULTANT prior to termination, including,
  but not limited to, the number of hours and other authorized costs audited in accordance
  with the terms of the CONTRACT.
- 2. If the termination is brought about as a result of the unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the STATE.
- 3. The STATE reserves the right to terminate this CONTRACT in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the CONTRACT.

#### ARTICLE 19 – DEATH OR DISABILITY OF THE CONSULTANT

In the case of death or disability of one or more but not all persons herein referred to as the CONSULTANT, the rights and duties of the CONSULTANT shall devolve upon the survivors of the CONSULTANT, who shall be obligated to perform the services required under this CONTRACT, and the STATE shall make all payments due to them.

In case of the death or disability of all persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) calendar days to the STATE or their duly authorized representative. In case of the failure of the CONSULTANT's successors or personnel representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the state for any damages it may sustain by reason thereof. Upon the delivery of all such data to the STATE, the STATE will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of death of the last survivor.

#### ARTICLE 20 – INDEPENDENT CONTRACTOR

The CONSULTANT, in accordance with their status as an independent contractor, covenants and agrees that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the STATE by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or Retirement membership or credit.

## **ARTICLE 21 – COVENANT AGAINST CONTINGENT FEES**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT. For breach or violation of this warranty, the STATE shall have the right to annul this CONTRACT without liability, or, in its discretion, to deduct from the CONTRACT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **ARTICLE 22 – TRANSFER OF AGREEMENT**

The CONSULTANT specifically agrees, as required by State Finance Law, Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the CONTRACT or of their right, title or interest therein, or their power to execute such CONTRACT, to any other person, company or corporation, without the previous consent in writing of the STATE.

If this provision of the law be violated, the STATE shall revoke and annul the CONTRACT and the STATE shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet or otherwise dispose of the CONTRACT, except so much as may be required to pay his employees.

#### **ARTICLE 23 – PROPRIETARY RIGHTS**

The CONSULTANT agrees that if copyrights, patentable discoveries or inventions or rights in data should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York an irrevocable, nonexclusive, nontransferable paid-up license to reproduce, publish, make, use, and sell each subject invention throughout the world and by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27, and other applicable Federal laws, rules and regulations.

# **ARTICLE 24 – SUBCONTRACTORS/SUBCONSULTANTS**

The CONSULTANT may arrange for a portion(s) of its responsibilities under this CONTRACT to be subcontracted to qualified, responsible subconsultants/subcontractors, subject to approval of the STATE. If the CONSULTANT determines to subcontract a portion of the services, the subconsultants/subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this CONTRACT must be fully explained by the CONSULTANT to the STATE. As part of this explanation, the subconsultant/subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONSULTANT prior to execution of this CONTRACT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this CONTRACT including, but not limited to, the body of this CONTRACT, Appendix A – Standard Clauses for New York State Contracts, and the advertisement for proposals. Unless waived in writing by the STATE, all subcontracts between the CONSULTANT and subconsultants/subcontractors shall expressly name the STATE, through the DEPARTMENT, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the STATE a party to any subcontract or create any right, claim, or interest in the subconsultant/subcontractor or proposed subconsultant/subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the CONTRACT, to verify that the written subcontract between the CONSULTANT and subconsultants/subcontractors is in compliance with all provisions of this Section and any subcontract provisions contained in this CONTRACT.

The CONSULTANT shall give the STATE immediate notice of writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subconsultant/subcontractor or which may affect the performance of the CONSULTANT's duties under the CONTRACT. Any subcontract shall not relieve the CONSULTANT in any way of any responsibility, duty, and/or obligation of the CONTRACT.

If at any time during the performance under this CONTRACT total compensation to a subconsultant/subcontractor exceeds or is expected to exceed \$100,000, that subconsultant/subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

## ARTICLE 25 – CERTIFICATION REQUIRED BY 49CFR, PART 29

The signator to this CONTRACT, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company, partner, director, officer, or major stockholder (five percent or more ownership):

- 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- 2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;
- 3. Does not have a proposed debarment pending; and
- 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

## **EXCEPTIONS**

### ARTICLE 26 - CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing this Contract, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall completed and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- 3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1342, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not les than \$10,000 and not more than \$100,000 for each such failure.

4. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification shall be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

#### ARTICLE 27 – RESPONSIBILITY OF THE CONSULTANT

The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this CONTRACT. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.

Neither the STATE's review, approval, or acceptance of, nor payment for, the services required under this CONTRACT shall be construed to operate as a waiver of any rights under this CONTRACT or of any case of action arising out of the performance of this CONTRACT, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE cause by the CONSULTANT's negligent performance or breach of contract of any of the services furnished under the CONTRACT.

The rights and remedies of the STATE provided for under this CONTRACT are in addition to any other rights and remedies provided by law.

If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder, and as such, each acts both as principals and agent of the CONSULTANT and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint ventures associated for the purposes of undertaking this CONTRACT shall be jointly and severally liable to third parties, including, but not limited to the STATE, for acts or omissions of the CONSULTANT, or any other entity, partner or joint venture hereunder.

If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including, but not limited to the New York Partnership Law.

## ARTICLE 28 – SECURITY AND CONFIDENTIALITY OF INFORMATION

Information received as part of this CONTRACT shall be considered Confidential Information. The CONSULTANT warrants that it will take the appropriate steps as to its personnel, agents, officers, and any subcontractors/subconsultants regarding the obligations arising under this

clause to insure such confidentiality. The CONSULTANT shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration, or destruction. The CONSULTANT may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this CONTRACT. However, the CONSULTANT shall in no circumstance, communicate with the public or news media without prior authorization from the State's designee. Neither shall the CONSULTANT disclose information deemed confidential by the STATE nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this CONTRACT without written authorization of the STATE. This warranty shall survive termination of this CONTRACT.

The CONSULTANT shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §89-aa and State Technology Law §208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, the CONSULTANT shall be liable for the costs associated with such breach if caused by the CONSULTANT's negligence or willful acts or omissions, or the negligent or willful acts or omissions of the CONSULTANT's agents, officers, employees or subconsultants.

#### ARTICLE 29 – VENDOR RESPONSIBILITY

The Department of Transportation has undertaken an affirmative review of the CONSULTANT's responsibility in accordance with the applicable standards outlined in Comptroller's "Guide to Financial Operations", and based upon such review, reasonable assurance that the CONSULTANT is responsible has been determined.

General Responsibility: The CONSULTANT shall, at all times during the CONTRACT, remain responsible. The CONSULTANT agrees, if requested by the Commissioner of NYSDOT (or his or her designee), to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organization and financial capacity.

Suspension of Work (for Non-Responsibility): The Commissioner of NYSDOT (or his or her designee) in his or her sole discretion, reserves the right to suspend any or all activities under this CONTRACT at any time when he or she discovers information that calls into question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension order. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. CONTRACT activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the CONTRACT.

Termination (for Non-Responsibility): Upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the CONTRACT may be terminated by the Commissioner of NYSDOT (or his or her designee) at the CONSULTANT's

expense where the CONSULTANT is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue legal or equitable remedies for such breach.

#### **ARTICLE 30 – NOTICES**

- 1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
  - a. Via certified or registered United States mail, return receipt requested;
  - b. By facsimile transmission;
  - c. By personal delivery;
  - d. By expedited delivery service; or
  - e. By email.

Such notices shall be addressed as follows or to such difference addresses as the parties may time-to-time designate:

## **New York State Department of Transportation:**

Contact Person's Name: Matt Bromirski, Contract #C038048

**Title:** Deputy Assistant Commissioner, Office of Contract Management **Address:** NYSDOT, Office of Contract Management, 50 Wolf Rd, 6<sup>th</sup> Floor, Albany, NY 12232

Telephone Number: (518) 457-2600 Email: Matt.Bromirski@dot.ny.gov

Consultant's Name: Enter Prime Consultant Name

**Contact Person's Name:** 

Title: Address:

Telephone Number:

Email:

- 2. Any such notice shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or certified registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- 3. The parties may from time-to-time, specify any new or different address in the United States as their address for purpose of receiving notice under this CONTRACT by giving fifteen (15) calendar days' notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this CONTRACT.
- Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

## **ARTICLE 31 – TITLE VI ASSURANCE**

During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

- Compliance with Regulations: The CONSULTANT shall comply with the Regulation relative
  to nondiscrimination in Federally-assisted programs of the Department of Transportation of
  the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal
  Regulations, Part 200 as they may be amended from time-to-time (hereinafter referred to
  as the "Regulations"), which are herein incorporated by reference and made a part of this
  CONTRACT.
- 2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the CONTRACT, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors/subconsultants, including procurements or materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, Section 21.5 of the Regulations, including employment practices when the CONTRACT covers a program set forth in Appendix B of the Regulations.
- 3. Solicitations for Subcontractor/Subconsultants, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this CONTRACT and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- 4. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to NYSDOT's Office of Diversity and Opportunity or FHWA, as appropriate, and shall set forth the efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this CONTRACT, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies and/or
  - b. Cancellation, termination, or suspension of the CONTRACT in whole or in part.
- 6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interest of the United States.

## **ARTICLE 32 – CONSULTANT DISCLOSURE LEGISLATION**

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the "State Consultant Services Contractor's Annual Employment Report" (Form B), Exhibit \_\_\_\_\_) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15<sup>th</sup> of each year the CONTRACT is in effect. The CONSULTANT shall provide information regarding all employees providing service under this CONTRACT, whether employed by the CONSULTANT or any subcontractor or subconsultant. Form B will capture historical information, detailing actual employment data for the most recently completed State fiscal year (April 1<sup>st</sup> to March 31<sup>st</sup>). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the address:

# By Mail:

NYS Office of the State Comptroller Bureau of Contracts 110 State Street, 11<sup>th</sup> Floor Albany, NY 12236 ATT: Consultant Reporting

NYS Department of Civil Service Alfred E. Smith Building Albany, NY 12239 ATT: Chapter 10 Counsel's Office

## By Email:

NYS Department of Transportation Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel, or PDF file via email to: <a href="mailto:consultantdisclosure@dot.ny.gov">consultantdisclosure@dot.ny.gov</a>.

## ARTICLE 33 – ENSURING PAY EQUITY BY STATE CONSULTANTS/CONTRACTORS

In accordance with Executive Order 162, issued on January 9, 2017, the CONSULTANT shall provide detailed workforce utilization reports of the CONSULTANT and each subconsultant/subcontractor that include, in addition to equal employment opportunity

information, the job title and salary of each employee directly performing work on a STATE contract.

If the CONSULTANT cannot identify the individuals working directly on a STATE contract, then the CONSULTANT and each subconsultant/subcontractor shall provide such information of each employee in the CONSULTANT's entire workforce. Such information shall be reported to NYSDOT at quarterly intervals.

The reporting period shall be on a quarterly basis (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31). The reporting requirement shall begin on the effective date of the CONTRACT and continue for the duration of the CONTRACT term. Reports shall be submitted within 15 calendar days from the end of each reporting period.

Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as shall be required by NYSDOT and as in accordance with Consultant Instruction 17-02.

The CONSULTANT shall include this provision in every subcontract so that such provisions shall be binding upon each subconsultant/subcontractor, of the subcontract is in excess of \$25,000.

## **ARTICLE 34 – CONFLICTS OF INTEREST**

The CONSULTANT has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONSULTANT's performance of the services does not and will no create a conflict of interest with, nor position the CONSULTANT to breach any other contract currently in force with the State of New York, that the CONSULTANT will no act in any manner that is detrimental to any STATE project on which the CONSULTANT is rendering services.

The CONSULTANT hereby affirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONSULTANT's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this CONTRACT. The CONSULTANT shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this CONTRACT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subconsultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the subconsultant/subcontractor, in conjunction with any further subconsulting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.

The STATE and the CONSULTANT recognize that conflicts may occur in the future because the CONSULTANT may have existing, or established new, relationships. The STATE will review the nature of any relationship and reserves the right to terminate this CONTRACT for any reason, or for cause, if, in the judgement of the STATE, a real or potential conflict of interest cannot be cured.

## **ARTICLE 35 – ETHICS REQUIREMENTS**

The CONSULTANT and its subconsultants/subcontractors shall not engage any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Commission Ethics and Lobbying in Government, or its predecessors (collectively the "Ethics Requirements"). The CONSULTANT certifies that all of its employees and those of its subconsultants/subcontractors who are former employees of the STATE who are assigned to perform services under this CONTRACT shall be assigned in accordance with all Ethics Requirements. During the term, no person who is employed by the CONSULTANT or its subconsultants/subcontractors and who is disqualified from providing services under this CONTRACT pursuant to any Ethics Requirements may share in any net revenues of the CONSULTANT or its subconsultants/subcontractors derived from this CONTRACT. The CONSULTANT shall identify and provide the STATE with notice of those employees of the CONSULTANT and its subconsultants/subcontractors who are former employees of the STATE that will be assigned to perform services under this CONTRACT, and make sure that such employees comply with all applicable laws and prohibitions. The STATE may request that the CONSULTANT provide it with whatever information the STATE deems appropriate about each such person's engagement, work cooperatively with the STATE to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the STATE, instruct any such person to seek the opinion of the New York State Commission on Ethics and Lobbying in Government. The STATE shall have the right to withdraw or withhold approval of any subconsultant/subcontractor if utilizing such subconsultant/subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The STATE shall have the right to terminate this CONTRACT at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

**IN WITNESS WHEREOF**, this CONTRACT No. C038048 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT, by signature below, has duly executed this CONTRACT effective the date and year first above written.

In addition to the acceptance of this CONTRACT, the DEPARTMENT certifies that original copies if this signature page will be attached to all other exact copies of this CONTRACT.

| RECOMMENDED BY:   | FOR THE PEOPLE OF THE STATE OF NEW YORK  |  |  |
|---|--|--|--|
|   | By: Department of Transportation   |  |  |
| Office of Contract Management Date:   | Department of Transportation  Date:  |  |  |
| Responsibility Questionnaire" subreme, 20 pursuant to to the Operations is complete, true, and a date of that submission that would answers provided on the "Vendor In addition to the acceptance of the STATE with respect to the requirer | that all information with respect to the "Vendor mitted by (Consultant Firm Name) on day of he requirements set forth in OSC's Guide to Financial accurate. I additionally certify nothing has occurred since the dresult in requiring a change or alteration to any of the Responsibility Questionnaire" submitted that date.  is CONTRACT, I certify that all information provided to the ments contained in State Finance Law Section §139-j & §139-l |  |  |
| is complete, true, and accurate.  | Deter  |  |  |
| By: FIRM  | Date:  |  |  |
| OPERATION OF THE REGION   | N 10 TRANSPORTATION MANAGEMENT CENTER (TMC)  |  |  |
| ATTORNEY GENERAL  | THOMAS P. DINAPOLI<br>STATE COMPTROLLER  |  |  |
|   |  |  |  |
| Ву:   | Ву:  |  |  |
| Date:   | Date:  |  |  |

# Acknowledgment for Contract #C038048

| For contracts s   | igned in New York S  | <u>State</u>  |  |
|---|--|---|--|
| State of New Y  | ork )  |   |  |
| County of   | ) ss.:   |   |  |
| appeared<br>on the basis of<br>the within inst<br>his/her/their c                                       | satisfactory eviden<br>rument and acknow<br>apacity(ies), and the  | nce to be the indiving viedged to me that a to by his/her/their                                     | , before me the undersigned personally , personally known to me or proved to me dual(s) whose name(s) is (are) subscribed to the/she/they executed the same in signature(s) on the instrument, the e individual(s) acted, executed the   |
|   |  |   | Notary Public  |
|   | My Commis  | ssion Expires:  |  |
| For contracts s   | igned <b>outside</b> of Ne   | ew York State   |  |
| State of  | )  |   |  |
| County of   | ) s  | s.:   |  |
| appeared<br>on the basis of<br>the within inst<br>his/her/their c<br>individual(s), o<br>instrument, an | satisfactory eviden<br>rument and acknow<br>apacity(ies), that by<br>r the person upon b<br>d that such individu | nce to be the indiving viedged to me that whis/her/their signormals of which the ual(s) made such a | , before me, the undersigned, personally , personally known to me or proved to me dual(s) whose name(s) is (are) subscribed to the/she/they executed the same in ature(s) on the instrument, the individual(s) acted, executed the ppearance before the undersigned in (insert the city or other political subdivision |
| and the state (   | or county or other p   | nace the acknowle   | dgment was taken).   |
|   |  |   | Notary Public  |
|   |  | (Signature and  | office of individual taking acknowledgment)  |

63

My Commission Expires:

# **APPENDIX A**

# STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.

# **TABLE OF CONTENTS**

|     | Page   |           |
|-----|--|-----------|
| 1.  | Executory Clause   | A3        |
| 2.  | Non-Assignment Clause  | A3        |
| 3.  | Comptroller's Approval   | A3        |
| 4.  | Workers' Compensation Benefits   | A3        |
| 5.  | Non-Discrimination Requirements  | A3        |
| 6.  | Wage and Hours Provisions  | A3-A4     |
| 7.  | Non-Collusive Bidding Certification  | <b>A4</b> |
| 8.  | International Boycott Prohibition  | <b>A4</b> |
| 9.  | Set-Off Rights   | <b>A4</b> |
| 10. | Records  | <b>A4</b> |
| 11. | Identifying Information and Privacy Notification                                   | <b>A4</b> |
| 12. | <b>Equal Employment Opportunities For Minorities and Women</b>                     | A4-A5     |
| 13. | Conflicting Terms  | A5        |
| 14. | Governing Law  | A5        |
| 15. | Late Payment   | A5        |
| 16. | No Arbitration   | A5        |
| 17. | Service of Process   | A5        |
| 18. | Prohibition on Purchase of Tropical Hardwoods                                      | A5-A6     |
| 19. | MacBride Fair Employment Principles  | A6        |
| 20. | Omnibus Procurement Act of 1992  | A6        |
| 21. | Reciprocity and Sanctions Provisions   | A6        |
| 22. | Compliance with Breach Notification and Data Security Laws                         | A6        |
| 23. | Compliance with Consultant Disclosure Law  | A6-A7     |
| 24. | Procurement Lobbying   | A7        |
| 25. | Certification of Registration to Collect Sales and Compensating Use Tax by Certain | A7        |
|     | State Contractors, Affiliates and Subcontractors                                   |           |
| 26. | Iran Divestment Act  | A7        |
| 27. | Admissibility of Contract  | A7        |

# STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

- **1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
- 2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
- 3. <u>COMPTROLLER'S APPROVAL</u>. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.
- **4.** WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- 5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is

66

subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

- **6.** WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.
- **7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.
- **8.** INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).
- **9. <u>SET-OFF RIGHTS.</u>** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
- 10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.
- **11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the

sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

- (b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.
- 12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:
- (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- (b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and
- (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such

duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

- 13. <u>CONFLICTING TERMS</u>. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
- **14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
- **15.** <u>LATE PAYMENT</u>. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.
- **16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.
- 17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
- **18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

- **19.** MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.
- **20.** OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development Division for Small Business Albany, New York 12245 Telephone: 518-292-5100 Fax: 518-292-5884 email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development Division of Minority and Women's Business Development 633 Third Avenue New York, NY 10017 212-803-2414

email: mwbecertification@esd.ny.gov

https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.
- 21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.
- **22.** COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.
- 23. <u>COMPLIANCE WITH CONSULTANT DISCLOSURE LAW</u>. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

# 25. <u>CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.</u>

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26**. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <a href="https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012">https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012</a>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

## **APPENDIX A-1**

# SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potiential subcontactor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract.or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

# APPENDIX B REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS (June 2016)

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <a href="http://www.dot.ny.gov/plafap">http://www.dot.ny.gov/plafap</a>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <a href="http://www.fhwa.dot.gov/programadmin/contracts/1273.htm">http://www.fhwa.dot.gov/programadmin/contracts/1273.htm</a>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

## NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

- 1. **NON DISCRIMINATION**. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
- 2. **EQUAL EMPLOYMENT OPPORTUNITY**. In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 3. **DISADVANTAGED BUSINESS ENTERPRISES**. In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work

under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

# FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agencya the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

# THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (<u>CFDA</u>b), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

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a The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

b http://www.cfda.gov/

# THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

| Highway Training and Education                         |
|--|
| Recreational Trails Program                            |
| Highway Planning and Construction - Highways for LIFE; |
| Surface Transportation Research and Development;       |
| Federal Transit-Capital Investment Grants              |
| Federal Transit-Metropolitan Planning Grants           |
| Federal Transit-Formula Grants                         |
| Formula Grants for Other Than Urbanized Areas          |
| State and Community Highway Safety                     |
| Appalachian Development Highway System                 |
| Appalachian Local Access Roads                         |
|  |

# **PROMPT PAYMENT MECHANISMS**

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

- (a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.
- (b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:
- (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
- (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.
- (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.
- (c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- (d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set.

Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

- (e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:
- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.
- (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
- (3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

# CARGO PREFERENCE ACT REQUIREMENTS - U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- **(b)** To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- **(c)** To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

#### **APPENDIX B-1**

# U.S. GOVERNMENT (FTA) REQUIRED CLAUSES

Any use of "recipient" or "subrecipient" shall mean the grant recipient of the associated agreement to which this appendix is incorporated and applies. Such terms are interchangeable and may be used contemporaneously. A recipient or subrecipient shall impose any requirements of this appendix, or associated agreement, to any sub-awardee.

Any use of "Third Party", "Third-Party Participant", or variations thereof, shall mean a grant recipient, sub-awardee, and contractor(s), subcontractor(s) or suppliers, whose work under the associated agreement is supported with FTA funding, eligible non-federal share dedicated to the Project, or is dedicated as an in-kind contribution eligible for non-federal share. Such terms are interchangeable and may be used contemporaneously.

Any use of "Sub-agreement" or "Sub-grant" shall mean an agreement through which the Recipient awards federal assistance to a Sub-grantee(s) to support or stimulate any of the Recipient's or Sub-grantee(s) Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third-party contract, third-party subcontract, or lease.

Any use of "Sub-awardee" shall mean any entity or person that receives federal assistance from the FTA through an associated agreement, but is not a direct recipient of fund from, or a direct party to this agreement with, the State. Sub-awardee shall not include a Third-Party Contractor, Third Party Subcontractor, or Lessee.

<u>Fly America Requirements</u> – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

**<u>Buy America Requirements</u>** – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

<u>Charter Bus Requirements</u> – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference. If a Recipient or any Third-Party Participant that has operated a chart bus in violation of federal laws and regulations, FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third-Party Participant from receiving Federal transit funds.

<u>School Bus Requirements</u> – School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micropurchases (\$10,000 or less, except for construction contracts over \$2,000).

Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third-Party Participant that has operated school bus service in violation of FTA's School Bus laws and regulations, FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third-Party Participant from receiving Federal transit funds.

<u>Cargo Preference</u> - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

#### Recipient shall:

- a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels;
- b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

<u>Seismic Safety</u> – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

**Energy Conservation** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$250,000.

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

# Safe Operation of Motor Vehicles- Applicability - All

a. <u>Seat Belt Use</u>. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, (62 Fed. Reg. 19217), by:

Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles.

- b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:
  - (1) <u>Safety</u>. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,
  - (2) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and
  - (3) Extension of Provision. The Recipient is encouraged to include the immediately preceding Provision of section (1) (2) in each third party sub-agreement (if applicable) at each tier supported with federal assistance.

#### **<u>Bus Testing</u>** – Applicability – Rolling Stock/Turnkey

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall **provide a copy of the final test report** to the recipient prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

# <u>Pre-Award & Post-Delivery Audit Requirements</u> - Applicability – Rolling Stock/Turnkey

Contractor shall comply with 49 USC 5323(1) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

- 1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:
  - A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
  - B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
  - C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
  - D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

<u>Lobbying</u> – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$250,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. Section 1601, et seq.] - Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier, up to the recipient.

## **Trafficking in Persons**

- (1) <u>Legal Authorities</u>. The Recipient and subrecipient agrees to comply with federal requirements and guidance, including:
  - (a) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. Section 7104(g), and
  - (b) The terms of this section, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. part 175, per U.S. OMB's direction.
- (2) <u>Definitions</u>. The Recipient agrees that <u>for purposes of this section</u>:
  - (a) <u>Employee</u> means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient's Underlying Agreement.
  - (b) Forced labor means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - (c) <u>Private entity</u> means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. Section 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 C.F.R. Section 175.25(b).
  - (d) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. Section 7102.
  - (e) <u>Commercial sex act</u> has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. Section 7102.
  - (f) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. Section 7102.
  - (g) <u>Recipient or Direct Recipient</u> means a non-federal entity that receives an award directly from the State of New York to carry out an activity under a federal program. The term "Recipient" does not include a Subrecipient.
  - (h) <u>Subrecipient or Sub-grantee</u> means any entity or person that receives federal assistance provided by the State instead of from the State directly, but does not include a Third-Party Contractor, Third Party Subcontractor, or Lessee.
  - (i) <u>Sub-agreement or Sub-grant</u> means an agreement through which the Recipient awards federal assistance to its Subrecipient(s) to support or stimulate any of the Recipient's or Subrecipient's Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third-party contract, third party subcontract, or lease.

- (j) "This Section" any references to "this section" shall mean and refer to the section titled, "Trafficking in Persons".
- (3) <u>Provisions Applicable to All Recipients</u>. The Recipient agrees to and assures that it, and any Subrecipients, will:
  - (a) <u>Provide Information</u>. Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this section, and
  - (b) <u>Sub-agreement Provision</u>. Certify and include the following provision in any sub-agreement it enters with a private entity as defined above in section (2)(c) of this section:

Recipient, or sub recipient, agrees that it and its employees that participate in the Recipient's Award, may not:

- Engage in severe forms of trafficking in persons during the period that the Recipient's Award is in effect.
- 2. Procure a commercial sex act during the period that the Recipient's Award is in effect, or
- 3. Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder.
- (4) Provisions Applicable to a Private Entity Recipient. If the Recipient is a private entity, it agrees that:
  - (a) <u>Prohibitions.</u> It, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Underlying Agreement will not:
    - Engage in severe forms of trafficking in persons during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect,
    - Procure a commercial sex act during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect, or
    - 3 Use forced labor in the performance of the Recipient's or Subrecipient's Underlying Agreement or sub-agreements.
  - (b) Termination of Federal Assistance. Section 106(g) of the TVPA, as amended, 22 U.S.C. Section 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. part 175, provide FTA and the State of New York, through receipt of federal funds, the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government or the State of New York, if FTA or the State of New York determines that the private entity Recipient or its Subrecipient:
    - $\underline{1}$  Has violated a prohibition described above in section (4)(a) of this Section, or
    - 2 Has an employee whose conduct is determined to have violated a prohibition described above in section (4)(a) of this Section because that employee's conduct is either:
      - a Associated with the performance of the Recipient's Underlying Agreement, or
      - b Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:
        - (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, or
        - (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180.
- (5) Provisions Applicable to a Recipient That is Not a Private Entity. A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. Section7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. part 175, provides FTA, and consequently the State, the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government or the State of New York, for a violation of that Act if FTA, or the State of New York, determines that:
  - (a) A private entity that is the Recipient or Subrecipient is determined to have engaged in severe forms of trafficking in persons during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect; procured a commercial sex act during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect; or used forced labor in the performance of the Recipient's or Subrecipient's Underlying Agreement or sub-agreements thereunder; or
  - (b) An employee of a private entity that is the Recipient or Subrecipient has engaged in severe forms of trafficking in persons during the period of time that the Recipient's or Subrecipient's Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient's or Subrecipient's Underlying Agreement is in effect; or used forced labor in the performance of the Recipient's or Subrecipient's Underlying Agreement or sub-agreements thereunder, and whose conduct described above is associated with the performance of the Recipient's or Subrecipient's Underlying Agreement; or is imputed to the Subrecipient using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200.
- (6) Remedies Other Than Termination of Federal Assistance. The Recipient or Subrecipient agrees that FTA's right to terminate federal assistance as provided in the TVPA and in sections (4)(b) and (5) are in addition to all other remedies for noncompliance available to the State and Federal Government under the associated grant agreement.

<u>Access to Records and Reports</u> – Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and

transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

- 2. Where the purchaser is a State and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
- 3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- 4. Where a purchaser which is an recipient, subrecipient, or a sub-grantee of an FTA recipient, and in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1)) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- 5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto, as provided by 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes - Applicability - All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract, to the extent that such are publicly available. Contractor's failure to comply shall constitute a material breach of the contract.

**Bonding Requirements** – Applicability – For those construction or facility improvement contracts or subcontracts exceeding \$250,000, FTA may accept the bonding policy and requirements of the recipient, provided they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

# Bid Bond Requirements (Construction)

- (a) Bid Security A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
- (b) Rights Reserved In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the

written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

#### (a) Performance bonds

- 1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
- 2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

#### (b) Payment bonds

- 1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
- 2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

#### Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

- (a) The following situations may warrant a performance bond:
  - 1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
  - 2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
  - 3. Substantial progress payments are made before delivery of end items starts.
  - 4. Contracts are for dismantling, demolition, or removal of improvements.
- (b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
  - 1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
  - 2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.
  - The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

- (d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
  - 1. The penal amount of payment bonds shall equal:
    - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
    - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - (iii) Two and one half million if the contract price is increased.

#### Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient). Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

#### Warranty of the Work and Maintenance Bonds

- 1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

# <u>Clean Air</u> – Applicability – All contracts over \$250,000.

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

<u>Recycled Products</u> – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

<u>Davis-Bacon and Copeland Anti-Kickback Acts</u> – Applicability -Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000

# (1) Minimum wages -

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under pa

1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

## (ii) Responsibilities

- (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iv) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (V) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside, in a separate account, assets for the meeting of obligations under the plan or program.
- (Vi) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
  - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(v)(B) or (1)(v)(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### (3) Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(ii)(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
- (ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees -

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program,

who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is a
- (iii) Equal employment opportunity The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may, by appropriate instructions, require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) <u>Disputes concerning labor standards</u> Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of Eligibility (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

# <u>Contract Work Hours & Safety Standards Act</u> – Applicability – Contracts over \$250,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment

of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages In the event of any violation of the clause set forth in paragraph (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

Awards Involving Commerce. The Recipient agrees to comply, and assures that each Third-Party Participants will comply, with the Fair Labor Standards Act (FLSA), 29 U.S.C. Section 201 *et seq.* to the extent that the FLSA applies to employees performing work with federal assistance provided through the Underlying Agreement involving commerce, or as the Federal Government otherwise determines applicable.

No Government Obligation to Third Parties - Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

- (1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

<u>Program Fraud and False or Fraudulent Statements or Related Acts</u> – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

- (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
- (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
- (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

<u>Termination</u> – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

- a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other

provisions of the contract, the recipient may terminate this contract for default. Termination shall be effectuated by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions.

If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

- d. Waiver of Remedies for any Breach If the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

- 1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
- 2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

# Government-wide Debarment and Suspension (Nonprocurement) - Applicability - Contracts over \$25,000

The Recipient/subrecipient agrees to the following:

- (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:
  - (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third-Party Participant that is debarred or suspended except as authorized by:
    - (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200,
    - (ii) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and
    - (iii) Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note,
  - (b) It will review the U.S. GSA "System for Award Management," https://www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and
  - (c) It will include, and require each of its Third-Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
    - (i) Will comply with Federal debarment and suspension requirements, and
    - (ii) Reviews the "System for Award Management" at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and
    - (iii) If the Recipient suspends, debars, or takes any similar action against a Third-Party Participant or individual, the Recipient will provide immediate written notice to the:
      - (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,
      - (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or
      - (c) FTA Chief Counsel,

<u>Contracts Involving Federal Privacy Act Requirements</u> – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable

requirements of the Privacy Act of 1974, 5 U.S.C. Section 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements— Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

- a. <u>Nondiscrimination in Federal Public Transportation Programs</u>. The Recipient agrees to, and assures that each Third-Party Participant will, comply with Federal transit law, 49 U.S.C. Section 5332 (FTA's "Nondiscrimination" statute):
  - (1) FTA's "Nondiscrimination" statute prohibiting discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex,
  - (f) Disability, (g) Age, or (h) Gender identity and
  - (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity,
  - (3) Except as FTA determines otherwise in writing:
    - (a) General. Follow:
      - (i) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and
      - (ii) Other applicable Federal guidance that may be issued, but
    - (b) for the exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program;
- b. Nondiscrimination Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third-Party Participant will:
  - (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin,
  - (2) Comply with:
    - (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d et seq.,
    - (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and
    - (c) Federal transit law, specifically 49 U.S.C. Section 5332, as stated in the preceding section a, and
  - (3) Except as FTA determines otherwise in writing, follow:
    - (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance.
    - (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. Section 50.3, and
    - (c) Other applicable Federal guidance that may be issued;

# c. Equal Employment Opportunity.

- (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third-Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:
  - (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.,
  - (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note,
  - (c) Comply with Federal transit law, specifically 49 U.S.C. Section 5332, as stated in section a, and
  - (d) Comply with FTA Circular 4704.10ther applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.
- (2) General. The Recipient agrees to:
  - (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: (1) Race, (2) Color, (3) Religion, (4) Sex, (5) Disability, (6) Age, or (7) National origin,
  - (b) Take affirmative action that includes, but is not limited to: (1) Recruitment advertising, (2) Recruitment, (3) Employment, (4) Rates of pay, (5) Other forms of compensation, (6) Selection for training, including apprenticeship, (7) Upgrading, (8) Transfers, (9) Demotions, (10) Layoffs, and (11) Terminations, with the exception of Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

- (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third-Party Participant, with:
  - (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
  - (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note,

# d. Disadvantaged Business Enterprise.

- (1) To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project, and Recipient agrees to comply with:
  - (a) Section 1101(b) of Map-21, 23 U.S.C. Section 101 note,
  - (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and
  - (c) Federal transit law, specifically 49 U.S.C. Section 5332,
- (2) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26,
- (3) Assurance. As required by 49 C.F.R. Section 26.13(a),
- (4) The Recipient provides assurance that:
  - (a) The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26.
  - (b) The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.
  - (c) Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement.
  - (d) Upon notification to the Recipient of its failure to abide by DBE requirements, the Federal Government may impose sanctions as provided for in 49 C.F.R. part 26, as implemented by the State through this agreement, and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. Section 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Section 3801 et seq.,
- (5) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation.

#### e. Nondiscrimination on the Basis of Sex

The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Section 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. Section 5332, as stated in section a.

#### f. Nondiscrimination on the Basis of Age

The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:

- (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. Sections 621 634, which prohibits discrimination on the basis of age,
- (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA.
- (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,
- (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and
- (5) Federal transit law, specifically 49 U.S.C. Section 5332, as stated in section a,

# g. Nondiscrimination on the Basis of Disability

The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:

- (1) Federal laws, including:
  - (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794, which prohibits discrimination on the basis of disability

- in the administration of federally funded programs or activities,
- (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. Section 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer,"
- (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. Section 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities,
- (d) Federal transit law, specifically 49 U.S.C. Section 5332, which now includes disability as a prohibited basis for discrimination, and
- (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,
- (2) Federal regulations, including:
  - (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37,
  - (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27,
  - (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39,
  - (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38,
  - (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35,
  - (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36,
  - (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630,
  - (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F,
  - (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and
  - (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and
- (3) Other applicable Federal civil rights and nondiscrimination guidance,
- h. <u>Drug or Alcohol Abuse</u> Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:
- (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. Section 1101 et seq.,
- (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. Section 4541 et seq., and
- (3) The Public Health Service Act, as amended, 42 U.S.C. Sections 290dd 290dd-2,
- i. <u>Access to Services for People with Limited English Proficiency</u>. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:
- (1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. Section 2000d-1 note, and
- (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,
- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to:
- (1) Comply with other applicable Federal nondiscrimination laws and regulations, and
- (2) Follow Federal guidance prohibiting discrimination.
- k. <u>Remedies</u>. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

#### **Breaches and Dispute Resolution** – Applicability – All contracts over \$250,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. Section 3729.

<u>Performance During Dispute</u> - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

<u>Remedies</u> - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

<u>Rights and Remedies</u> - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### Patent and Rights Data -

Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

#### Patent Rights

# A. General. The Recipient agrees that:

- (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third-Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery,
- (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and
- (3) When a patent is issued or patented information becomes available as described in Patent Rights Section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

# B. Federal Rights.

# The Recipient agrees that:

- (1) Its rights and responsibilities, and the rights and responsibilities of each Third-Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and
- (2) Unless the Federal Government determines otherwise in writing irrespective of the Recipient's status or the status of any Third-Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in:
  - (a) 35 U.S.C. Section 200 et seq., and
  - (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and
- C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:
  - (1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and
  - (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:
    - (a) For compliance with 35 U.S.C. Section 200 et seq., which applies to patent rights developed under a federally funded research-type project, and
    - (b) As FTA determines otherwise in writing.

# Rights in Data and Copyrights

- A. Definition of "Subject Data" means recorded information, subject to (1) Copyright, whether or not copyrighted, and (2) Delivery, that which is delivered or specified to be delivered under the Underlying Agreement.
- B. Examples of "Subject Data." Examples of "subject data" include, but are not limited to:
  - (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but do not include: (1) Financial reports,
  - (2) Cost analyses, or (3) Other similar information used for Project administration,
- C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement:
  - (1) Prohibitions. The Recipient may not:
    - (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or
    - (b) Permit others to do so, but
  - (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to:
    - (a) Publications or reproductions for the Recipient's own internal use,

- (b) An institution of higher learning,
- (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or
- (d) The portion of data that has the Federal Government's prior written consent for release,
- D. Federal Rights in Data and Copyrights. The Recipient agrees that:
  - (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable,
  - (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and
- E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third-Party Participants, therefore, the Recipient agrees that:
  - (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet,
  - (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request,
  - (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third-Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing.
  - (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA,
  - (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but
  - (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both:
    - (a) For the Recipient's use, and
    - (b) Acquired with FTA capital program funding,
- F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:
  - (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and
  - (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:
    - (a) For compliance with 35 U.S.C. Section 200 et seq., which applies to patent rights developed under a federally funded research-type project, and
    - (b) As FTA determines otherwise in writing,
- G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:
  - (1) Violation by Recipient.
    - (a) If it willfully or intentionally violates any:
      - (1) Proprietary rights, (2) Copyrights, or (3) Right of privacy, and
    - (b) Its violation occurs from any of the following uses of Project data:
      - (1) Publication, (2) Translation, (3) Reproduction, (4) Delivery, (5) Use, or (6) Disposition, then
    - (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of:
      - (1) The Federal Government's officers acting within the scope of their official duties,
      - (2) The Federal Government's employees acting within the scope of their official duties, and
      - (3) Federal Government's agents acting within the scope of their official duties, but
  - (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights Section G(1) if:
    - (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or
    - (b) State law. If indemnification is prohibited or limited by applicable State law,
- H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either:
  - (1) Implies a license to the Federal Government under any patent, or
  - (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,
- I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless:
  - (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and
  - (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and
- J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and

information the Recipient submits to the Federal Government as required by:

- (1) The Freedom of Information Act, 5 U.S.C. Section 552,
- (2) Another applicable Federal law requiring access to Project records,
- (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. Section 19.36(d), or
- (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

<u>Transit Employee Protective Provisions</u> – Applicability – Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

#### Public Transportation Employee Protective Arrangements

The Recipient agrees that 49 U.S.C. Section 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

- 1. <u>U.S. DOL Certification</u> When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. Sections 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. Sections 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third-Party Participant providing public transportation operations will agree, that:
  - (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project,
  - (b) It must comply with 49 U.S.C. Section 5333(b), and any future amendments thereto,
  - (c) It will follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing,
  - (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including:
    - (1) Alternative comparable arrangements U.S. DOL has specified for the Project,
    - (2) Any revisions U.S. DOL has specified for the Project, or
    - (3) Both, and
  - (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project:
    - (1) The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement,
    - (2) The documents cited in that U.S. DOL certification for the Project,
    - (3) Any alternative comparable arrangements that U.S. DOL has specified for the Project, and
    - (4) Any revisions that U.S. DOL has specified for the Project,
  - 2. Special Warranty When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. Section 5311, as amended by Map-21, for former 49 U.S.C. Section 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third-Party Participant providing public transportation operations will agree, that:
    - (a) It must comply with Federal transit laws, specifically 49 U.S.C. Section 5333(b),
    - (b) Follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing,
    - (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: (1) Any alternative comparable arrangements U.S. DOL has specified for the Project, (2) Any revisions U.S. DOL has specified for the Project, or (3) Both, and
    - (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement:
      - 1. The U.S. DOL Special Warranty for its Project,
      - 2. Documents cited in that Special Warranty,
      - 3. Alternative comparable arrangements U.S. DOL specifies for the Project, and
      - 4. Any revisions that U.S. DOL has specified for the Project, and
  - 3. Special Arrangements for 49 U.S.C. Section 5310 Projects. The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. Section 5310, and former 49 U.S.C. Sections 5310 or 5317, FTA has determined that it was not "necessary or appropriate" to apply the conditions of 49 U.S.C. Section 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions:
    - (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. Section 5333(b) for all transfers of funding authorized

under title 23. United States Code (flex funds), and

(b) FTA reserves the right to make other exceptions as it deems appropriate.

Disadvantaged Business Enterprise (DBE) - Applicability - Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt Payment** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

<u>Incorporation of Federal Transit Administration (FTA) Terms</u> – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

<u>Drug & Alcohol Abuse and Testing</u> – Applicability – Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations:

- (a) Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants), "49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. Sections 8103 et seq., and 2 CFR part 182,
- (b) Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

#### **Other Federal Requirements:**

<u>Full and Open Competition</u> – In accordance with 49 U.S.C. Section 5325, all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from inconsistent requirements imposed by Federal statute or

regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

<u>Conformance with ITS National Architecture</u> – Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

## Safeguarding Protected Personally Identifiable Information (PPI)

U.S. DOT Common Rules requires Recipient to implement, and require any sub-grantee, if any, to implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive.

Access Requirements for Persons with Disabilities – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation – To the extent required by law, in the announcement of any third-party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third-party contract.

<u>Interest of Members or Delegates to Congress</u> - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

<u>Ineligible Contractors and Subcontractors</u> - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

<u>Other Contract Requirements</u> - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance with Federal Regulations — Any of Recipient's contracts shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Recipient and any third-party participant(s) shall comply with 49 U.S.C. Section 303, 23 C.F.R part 774, 54 U.S.C. Section 306108, 54 U.S.C. 312501 et. seq., 36 C.F.R. part 800, 42 U.S.C. Section1996, Section3161 note and Executive Order No. 13007 as such actions may relate to: Parks, Recreation Areas, Wildlife and Waterfowl Refuges; Historic Sites, Archeological and Historic Preservation, Protection of Historic Properties; preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act; compliance with environmental mitigation measures related to environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. Section 303, and other environmental documents.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. Section 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

**Environmental Justice** - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following:

(1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,"

February 11, 1994, 42 U.S.C. Section 4321 note, as well as facilitating compliance with that Executive Order, and

- (2) DOT Order 5610.2, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and
- (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections – Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: The National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

<u>Geographic Information and Related Spatial Data</u> – Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

#### **Geographic Preference**

All project activities must be advertised without geographic preference, except as permitted by federal law, regulation, requirement or guidance. Such exception may include, but may not be limited to, A/E contracts under certain circumstances and preference for hiring veterans on transit construction projects.

#### **Organizational Conflicts of Interest**

The Recipient and subrecipient, if any, agrees that it will not enter a procurement that involves a real or apparent organizational conflict of interest described as follows:

- (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:
  - (a) To that Third-Party Participant or another Third-Party Participant performing the Project work, and
  - (b) That impairs that Third Party Participant's objectivity in performing the Project work, or
- (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,
- (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:
  - (a) Any instances of organizational conflict of interest, or
  - (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and
- (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

#### **Ethics**

Standards of Conduct. At a minimum, the Recipient / Subrecipients will establish and maintain written Standards of Conduct covering conflicts of interest that:

- (1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third-party contract or subcontract:
  - (a) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third-party agreement,
  - (b) The immediate family members or partners of those listed above in section (1)(a) of this Master Agreement, and
  - (c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections (1)(a) and (b) of this Master Agreement;
- (2) Prohibit those individuals listed above in section (1) from:
  - (a) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third-Party Participants at any tier, including selection, award, or administration of a third-party agreement in which the individual has a present or potential financial or other significant interest, and
  - (b) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third-Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and
- (3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section (1) and the Recipient's or Subrecipient's Third Party Participants.

# Federal Single Audit Requirements for State Administered Federally Aid Funded Projects

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non- Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non- Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt

from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non- Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

# Catalog of Federal Domestic Assistance (CFDA) Identification Number

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

#### The CFDA number for the Federal Transit Administration

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

<u>Veterans Preference</u> As provided by 49 U.S.C. Section 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. Section 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**Updated March 1, 2019** 

#### APPENDIX C

# SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

- 1. GENERAL (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive, NYS Executive Law Article 15, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, by Executive Order 162, issued on January 9, 2017 and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.
- (b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.
- (c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.
- (d) The CONSULTANT and all their sub-consultants and/or subcontractors shall comply with Executive Order 162, issued on January 9, 2017, requiring quarterly workforce utilization reports, detailing reports of the Consultant and all of their subconsultants, which includes in addition to equal opportunity information, the job and salary of each employee directly performing work on a State contract.

#### 2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the contract.
- B. In performing the contract, the Consultant shall:
  - 1. Ensure that each Consultant and subconsultant or subcontractor performing work on the contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. The Consultant shall submit an EEO policy statement to the New York State Department of Transportation (NYSDOT) after the date of the notice by the NYSDOT to award the contract to the Consultant as determined by the Department.
  - 3. If the Consultant or any of its subconsultants, does not have an existing EEO policy statement, the NYSDOT may require the Consultant or subconsultant to adopt a model statement consistent with item B.4.a through d of this section.
  - 4. The Consultant's EEO policy statement shall include the following language:
    - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
    - b. The Consultant shall state in all solicitations or advertisements for employees that in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, natural origin, sex, age, disability or marital status.
    - c. The Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperation the implementation of the Consultant's obligation herein.
    - d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the contract.

- e. The Consultant shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest.
- **3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER** The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.
- **4. DISSEMINATION OF POLICY** (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:
  - (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
  - (2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.
  - (3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)
- (b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:
  - (1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - (2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- (c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.
- **5. RECRUITMENT** (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.
- (b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.
- (c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.
- **6. PERSONNEL ACTIONS** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

- (a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- (b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.
- (c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- (d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.
- **7. TRAINING AND PROMOTION** (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.
- (b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.
- c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.
- (d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
- **8. UNIONS** If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:
- (a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- (b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.
- (c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.
- (d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents

the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

- **9. AFFIRMATIVE ACTION IN SUBCONTRACTING** (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.
- (b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).
- (c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.
- (d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.
- (e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.
- **10. RECORDS AND REPORTS** (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:
  - (1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
  - (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
  - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
  - (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
  - (5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.
- (b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.
- (c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:
  - (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
  - (2) cancellation, termination or suspensions of the agreement in whole or in part.
- **11. TRAINING SPECIAL PROVISIONS** This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in Article II.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less that 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated July 2017

#### APPENDIX D

# PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

(revised State 7-12-2017)

#### I. General Provisions

- A. The New York State Department of Transportation (NYSDOT) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (NYCRR) for all State contracts, as defined therein, with a value (10 in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2)in excess of \$100,000 for real property renovations and construction.
- B. The consultant to the subject contract (the "Consultant" and the "Contract" respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSSDOT, to fully comply and cooperate with NYSDOT in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (EEO), and contracting opportunities for New York State-certified Minority and Women-Owned Business Enterprises (MWBEs). The Consultant's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix C and such other remedies are available to NYSDOT pursuant to the Contract and applicable law.

#### II. MWBE Utilization Plan

- A. The Consultant represents and warrants that the Consultant has submitted an MWBE Utilization Plan, or shall submit a MWBE Utilization Plan at such time as shall be required by NYSDOT. The MWBE Utilization Plan is to be submitted consistent with the requirements stated in the procurement document.
- B. The Consultant agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Consultant further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such material breach, NYSDOT shall be entitled to any remedy provided herein, including but not limited to, a finding that the Consultant is non-responsive.

### III. Waivers Post Contract Execution

- A. If the Consultant, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Consultant may submit a request for a waiver to the NYSDOT Office of Contract Management, Civil Rights Unit. Such waiver request must be supported by evidence of the Consultant's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NYSDOT shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If NYSDOT, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Consultant is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, NYSDOT may issue a notice of deficiency to the Consultant. The Consultant must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the MWBE Contract Goals.

## IV. Liquidated Damages – MWBE Participation

- A. Where NYSDOT determines that the Consultant is not in compliance with the requirements of this Appendix and the Consultant refuses to comply with such requirements, or if the Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Consultant shall be obligated to pay to NYSDOT liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to the MWBEs had the Consultant achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSDOT, the Consultant shall pay such liquidated damages to NYSDOT within sixty (60) days after they are assessed. Provided, however, that if the Consultant has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Consultant following the complaint process.

# EXHIBIT \_\_\_ CDL FORM B

| FORM B  |   | OSC Use On<br>Reporting Co                                       | ode:                      |
|---|---|--|---------------------------|
|   |   | Category Co  | ode:                      |
|   | State Consultant Se<br>tor's Annual Emplo |  |                           |
| Report Per  | iod: April 1, t                           | o March 31,  |                           |
| Contracting State Agency Name: To Contract Number: Contract Term to Contractor Name: Contractor Address: Description of Services Being Prov | ·   | Agency Code  | : 17000                   |
| Scope of Contract (Choose one that Analysis   | arch                                      | r IT consulting ☐<br>Environmental Service<br>Other Consulting ☑ | es   Amount Payable Under |
| and O*NET Job Title   | Number of Employees                       | Number of Hours Worked   | the Contract              |
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| Total this page   | 0   | 0  | \$ 0.00                   |
| Grand Total   |   |  |                           |
| Name of person who prepared this Preparer's Signature:  Title:  Date Prepared: / /  | ·   | one #:   |                           |

# **Attachment 2: Consultant Information and Certification**

Contract Number(s): C038048

# **Project Title: Operation of the Region 10 Transportation Management Center (TMC)**

| . Consultant Information   |           |
|--|-----------|
| Firm Name:   |           |
| Address:   |           |
| City, State:   | Zip Code: |
| Telephone: ()  |           |
| Email Address:   |           |
| Contact Person Name:   | Title:    |
| Consultant's Federal Identification Number (FEIN):   |           |
| Consultant's NYSDOT Consultant Identification Number   | :         |
| Please indicate below the name, title, address and telepprepared this Proposal, as well as any other individual(s contractually bind the Proposer. | •         |
| Preparer's Name, Title:  |           |
| Address:   |           |
| Telephone: ()  |           |
| Email Address:   |           |
| Other Authorized Individual(s):  |           |
| Name, Title  |           |
| Address:   |           |
| Telephone: ( ) - Fmail Address:  |           |

# ii. Proposer Certifications

| By signing below, I, |        | , authorized individual of                        |
|----------------------|--------|---|
|                      | (Name) |   |
|                      |        | , make the following certifications regarding the |
| (Proposer Name)      |        |   |
| subject Proposal:    |        |   |

- 365-Day Offer: This Proposal is a firm offer for a 365-day period from the date of submission.
- The Proposer has read and will follow the procedure outlined in Section 7.2 of the RFP if it proposes the services of a former NYSDOT employee(s).
- ST-220: If selected for contract award greater than \$100,000, the Proposer will complete and submit the required ST-220-CA and ST-220-TD (Contractor Certifications) with the contract documents.
- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal load, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification or any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.
- As of January 1, 2019, bidders on New York State procurements subject to
  competitive bidding are required to submit a Certification on Sexual Harassment in
  bids. By submission of this bid, each bidder and each person signing on behalf of
  any bidder certifies, and in the case of a joint bid each party thereto certifies its own
  organization, under penalty of perjury, that the bidder has and has implemented a
  written policy addressing sexual harassment prevention in the workplace, and
  provides annual sexual harassment prevention training to all its employees. Such
  policy shall, at a minimum, meet the requirements of Section 201-g of the Labor
  Law
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C §1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certifications shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 U.S.C. Section 3801, et seq., are applicable thereto.

| Signature:                  | Date:  |
|-----------------------------|--|
| Name, Title:                |  |
| iii. Acceptance of Contract |  |
| By signing below, I,        | , authorized individual of                       |
| (Name)                      | hands and the three seconds and Assessed         |
| (Proposer Name)             | , hereby certify that I have read and Accept all |
| , ,                         | ontract, including Appendix A, which is included |
| Signature:                  | Date:  |
| Name, Title:                |  |

# Attachment 3: Form AOR Acknowledgement of Receipt

# **Acknowledgment of Receipt of RFP Modifications and Questions & Answers**

| NAME OF PROPOSER:   |                               |
|---|-------------------------------|
|   |                               |
| I hereby acknowledge receipt of the Operation<br>Center (TMC), Contract No. C038048 Request for<br>subsequent responses to Modifications and Qualisted below. |                               |
| MODIFICATION NUMBER   | DATE ISSUED BY THE DEPARTMENT |
|   |                               |
|   |                               |
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| QUESTION & ANSWER NUMBER  | DATE ISSUED BY THE DEPARTMENT |
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|   |                               |
|   |                               |
| NAME  |                               |
| TITLE   |                               |
| SIGNATURE   |                               |
| DATE  |                               |

# **Attachment 4: Procurement Lobbying Law Compliance**

- 1. Required Forms: The Proposer shall complete the following forms and include them in Part II: Cost and Administrative Proposal/Submittal.
  - Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance
     Law §139-j(3) and §139-j(6)(b)
     https://www.dot.ny.gov/main/business-center/consultants/consultants repository/offers affirmation and agreement form.pdf
  - Offerer Disclosure of Prior Non-Responsibility Determinations
     <a href="https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer disclos prior non.pdf">https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer disclos prior non.pdf</a>
- 2. NYSDOT Guidelines and Procedures

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through the Office of Contract Management (\*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to "NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES" at <a href="https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll">https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll</a> gandp v1.pdf

- 3. Summary of the policy and prohibitions regarding permissible contacts
  - f. Contacts Prior to Designation
    Any communication involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons
    - The Designated Office of Contract Management Specialist
    - The Office of Contract Management Specialist Supervisor
    - The Office of Contract Management Assistant Director
    - The Office of Contract Management Director

There are some communications exempted from this restriction:

- Participation in a pre-proposal conference
- Protests, complaints of improper conduct or misrepresentation

If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible contact was made, the offerer cannot be awarded the contract. A second violation would lead to a four-year bar on the award of public contracts to the offerer.

g. Contacts After Designation

NYSDOT identifies the primary contract negotiations contacts, which include:

- The Designated Office of Contract Management Specialist
- The Office of Contract Management Specialist Supervisor
- The Office of Contract Management Assistant Director
- The Office of Contract Management Director
- The Program Area Project Manager
- The Program Area Project Manager's Immediate Supervisor

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

h. Information required from offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller.

The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by email or fax as directed by NYSDOT:

Person's name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether the owner, employee, retained by or designated by the firm to appear before or contact NYSDOT.

i. Applicability to an executed contract:

Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement or contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

4. Rules and regulations and more information on this law, please visit: <a href="https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx">https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx</a>

For more information go to the NYSDOT's website at: <a href="http://www.dot.ny.gov">http://www.dot.ny.gov</a> or contact: Patricia Kappeller NYSDOT Office of Contract Management 50 Wolf Rd, 6<sup>th</sup> Floor Albany, NY 12232

Telephone: (518) 457-2600

Email: Patricia.Kappeller@dot.ny.gov

# Attachment 5: Consultant Disclosure Legislation Forms A&B

|                                      |                        | OSC Use C                                   | Only:                                |
|--------------------------------------|------------------------|---|--------------------------------------|
|                                      |                        | Reporting C                                 | Code:                                |
|                                      |                        | Category C                                  | ode:                                 |
|                                      |                        | Date Contra                                 | act Approved:                        |
| FORM A                               |                        |   |                                      |
|                                      |                        | or's Planned Employme End Of The Contract T |                                      |
| From Contract Sta                    | an Date Through The    | End Of The Contract 1                       | emi                                  |
| State Agency Name: Transportation    |                        | Agency C                                    | ode: DOT01                           |
| Contractor Name:                     |                        | Contract N                                  |                                      |
| Contract Start Date: / /             | Contrac                | t End Date: / /                             |                                      |
|                                      | Contrac                | t Elia Bato. 7 7                            |                                      |
| O*Net Employment Category            | Number of<br>Employees | Number of hours to be worked                | Amount Payable<br>Under the Contract |
|                                      |                        |   |                                      |
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|                                      |                        |   |                                      |
|                                      |                        |   |                                      |
| Total this name                      | 0                      | 0   | Φ 0.00                               |
| Total this page                      | 0                      | 0   | \$ 0.00                              |
| Grand Total                          |                        |   |                                      |
| Name of person who prepared this re  | port:                  |   |                                      |
| Title:                               |                        | Phone #:                                    |                                      |
| Preparer's Signature:                |                        |   |                                      |
| Date Prepared: / /                   |                        |   |                                      |
| (Use additional pages, if necessary) |                        |   | Page of                              |

| FORM B |  |
|--------|--|
|--------|--|

| OSC Use Only:   |  |
|-----------------|--|
| Reporting Code: |  |
| Category Code:  |  |

# State Consultant Services Contractor's Annual Employment Report

to March 31,

Report Period: April 1,

Contracting State Agency Name: Transportation
Contract Number:
Contract Term to
Contractor Name:
Contractor Address:
Description of Services Being Provided:

| Scope of Contract (Choose one that Analysis                | arch                   | r IT consulting ☐<br>Environmental Service | es 🗌                                 |
|--|------------------------|--|--------------------------------------|
| O*NET Employment Category<br>Number<br>and O*NET Job Title | Number of<br>Employees | Number of Hours<br>Worked                  | Amount Payable<br>Under the Contract |
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|  |                        |  |                                      |
|  |                        |  |                                      |
| Total this page  | 0                      | 0  | \$ 0.00                              |
| Grand Total  |                        |  | ·                                    |

| Name of person who prepared this report: |          |
|--|----------|
| Preparer's Signature:                    |          |
| Title:                                   | Phone #: |
| Date Prepared: / /                       |          |

Use additional pages if necessary)

Page of

# **Attachment 6: Non-Collusive Bidding Certification**

# NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE FINANCE LAW

Section 139-D, Statement of Non-Collusion in bids to the State:

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

- [1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
- [2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
- [3] No attempt has been made or will be made by the Bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE: [1], [2], AND [3] ABOVE HAVE NOT BEEN COMPLIED WITH, PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDERS CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT]

| Subscribed to under po | enalty of pe | rjury under the laws of the State of New York, this     | day |
|------------------------|--------------|---|-----|
| of                     | , 20         | as the act and deed of said corporation of partnership. |     |

# NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE FINANCE LAW

| F BIDDER(S) (ARE) A PARTNERSHIP, COMPL<br>NAMES OF PARTNERS OR PRINCIPALS | LEGAL RESIDENCE    |
|---|--------------------|
|   |                    |
|   |                    |
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|   |                    |
| F BIDDER(S) ARE A CORPORATION, COMPL                                      | ETE THE FOLLOWING: |
| NAME  | LEGAL RESIDENCE    |
| President:  |                    |
|   |                    |
|   |                    |
| Secretary:  |                    |
|   |                    |
|   |                    |
| Treasurer:  |                    |
|   |                    |
|   |                    |
| President:  |                    |
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|   |                    |
| Secretary:  |                    |
|   |                    |
|   |                    |
| Treasurer   |                    |
|   |                    |
|   |                    |

# NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE FINANCE LAW

| Identifying Data:                               |  |
|---|--|
| Potential Contractor:                           |  |
| Address:  |  |
| City, State:                                    | Zip Code:                                      |
| Telephone: () Ema                               | ail Address:                                   |
| If applicable, Responsible Corporate Officer:   |  |
| Name:   | Title:   |
| Signature:                                      | Date:  |
| Joint of combined bids by companies or firms mu | ust be certified on behalf of each participant |
| Legal Name of Person, Firm or Corporation       | Legal Name of Person, Firm or Corporation      |
| Title:  | Title:   |
| Address:  | Address:                                       |
| City, State:                                    | City, State:                                   |
| Zip Code:                                       | Zip Code:                                      |

#### Attachment 7: Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Firm offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, subcontractor, or consultant, attests that is performance of the services outlined in this RFP does not and will not create a conflict of interest with not position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

- 1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
- 2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflicts of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
- The fulfillment of obligations by the Fir, as proposed in the response, does not and will
  not compromise the Firm's ability to carry out its obligations under any existing
  contracts between the Firm and the State;
- 4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
- 5. During negotiations and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest of might cause a detrimental impact to the State as a whole including, but not limited tom any action or decision to divert resources from one State project to another;
- 6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State and a whole, including, but not limited to, any action or decision to divert resources from one State project to another;
- 7. No former officer or employee of the State who is not employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate Section 73(8)(a) of the State Ethics Law; and

8. The firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan ,travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgement, a real potential conflict of interest cannot be cured.

| Firm Name: |        |
|------------|--------|
| Name:      | Title: |
| Signature: | Date:  |

This form must be signed by an authorized executive or legal representative.

#### Attachment 8: Executive Order 177 Certification

This Certification must be completed and returned with the executed contract documents.

#### **EXECUTIVE ORDER 177**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodations for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require a reasonable accommodation in employment on the basis of Sabbath observances or religious practices.

Generally, the Human Rights Law applies to:

- All employers of four or more people, employment agencies, labor organizations and apprenticeships training programs in all instances of discrimination or harassment;
- Employers with fewer than four employees in all cases involving sexual harassment; and
- Any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Proposal/Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including, but not limited to, the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

| Proposer:  |       |  |
|------------|-------|--|
| Name:      |       |  |
| Signature: | Date: |  |

## Attachment 9: Executive Order No. 16 Certification

# Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that "all Affected State Entities are directed to refrain from entering into anynew contract or renewing any existing contract with an entity conducting business operations in Russia." The complete text of Executive Order No. 16 can be found here.

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations. As defined in Executive Order No. 16, an "entity conducting business operations in Russia" means an institution company, wherever located, conducting any commercial activity in Russia or transacting business with

the Russian Government or with commercial entities headquartered in Russia or with their principal place ofbusiness in Russia in the form of contracting, sales, purchasing, investment, or any business partnership. Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

|              | 1.     | No, Vendor does not conduct business operations in Russia within the meaning of Ex. No. 16.   | Recutive Order |
|--------------|--------|---|----------------|
|              | 2.a.   | Yes, Vendor conducts business operations in Russia within the meaning of Executive but has taken steps to wind down business operations in Russia or is in the process of business operations in Russia. (Please provide adetailed description of the wind down a schedule for completion.) | f winding down |
|              | 2.b    | but only to the extent necessary to provide vital health and safety services within R comply with federal law, regulations, executive orders, ordirectives. (Please provide description of the services being provided or the relevant laws, regulations, etc.)                             | ussia or to    |
|              | 3.     | Yes, Vendor conducts business operations in Russia within the meaning of Executive  | Order No. 16.  |
| bu           |        | dersigned certifies under penalties of perjury that they are knowledgeable about the V ssand operations and that the answer provided herein is true to the best of their knowledgeable about the V  |                |
| V            | endoi  | r Name:   |                |
| (16          | gal e  | entity)   |                |
| B            |        |   |                |
|              |        | ure)  |                |
| N            | ame:   |   |                |
| Ti           | tle: _ |   |                |
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# **Attachment 10: DBE Participation Information**

In accordance with the Code of Federal Regulations (CFR), Title 49, Part 26, NYSDOT is required to encourage Proposers to utilize Disabled Business Enterprises (DBE) in procurements that receive federal funds.

Please complete the following table for the prime firm and all subconsultants (consultant team composition). Please identify each firm's legal name, checking if they are certified DBE by utilizing the NYSUCP DBE Directory, and indicating each firm's percentage of total cost for the contract. Please keep in mind that only NYSUCP certified DBEs are eligible to count towards attainment of this federally funded procurement with a DBE participation goal.

Further, participation by a certified DBE prime consultant will count towards DBE participation and goal attainment.

If the combined percentage of total contract value for all proposed, certified DBEs is less than the DBE Participation Goal set for this contract, then the proposing prime firm is required to fill out and submit the **Subconsultant Participation Solicitation Log (Attachment 10a)** and a **Goal Attainment Explanation Letter**. Further, the prime consultants certified as a DBE who propose to meet the Department's DBE participation goal via their meaningful participation, are required to complete and submit the **Subconsultant Participation Solicitation Log (Attachment 10a)** if their outreach efforts result in proposed DBE subconsultant(s).

Please provide a copy of the firm's DBE letter from a NYSUCP certifying partner with your Part II: Cost and Administrative Proposal/Submittal.

Contract No.: C038048

| Firm Legal Name | NYSUCP Certified DBE |       | % of Total Contract<br>Value |  |
|-----------------|----------------------|-------|------------------------------|--|
|                 | DBE                  | NONE  |                              |  |
| Prime:          |                      |       |                              |  |
|                 |                      |       |                              |  |
|                 |                      |       |                              |  |
| Subconsultants: |                      |       |                              |  |
|                 |                      |       |                              |  |
|                 |                      |       |                              |  |
|                 |                      |       |                              |  |
|                 |                      |       |                              |  |
|                 |                      |       |                              |  |
|                 |                      | Total | 100%                         |  |

# Attachment 10a: DBE Subcontractor Participation Solicitation Log

| Contract No                               |              | Participation Goals DBE% |                                      | Page Number of                         |                      |
|---|--------------|--------------------------|--------------------------------------|--|----------------------|
| Prime Firm Name/Address                   |              |                          |                                      | Telephone Number (Including Area Code) |                      |
|   |              |                          |                                      | Email Address                          |                      |
| Solicited Company Name and Contact Person | Number (With | Federal<br>Employer ID   | Work Types Being<br>Solicited (enter | Types and Dates of Contacts            | Contact<br>Result(s) |
|   | Area Code)   | Number (FEIN)            | work types or CUF)                   |  | Code                 |
|   |              |                          |                                      |  |                      |
|   |              |                          |                                      |  |                      |
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<sup>\*</sup>See Attachment 11: Solicitation Log Instructions

# Attachment 11: Solicitation Log Instructions (Good Faith Effort Documentation)

To be deemed responsive to this solicitation, Consultants whose proposed D/M/WBE/SDVOB participation does not meet the established participation goal(s) must document and report their efforts to solicit participation by certified D/M/WBE/SDVOBs in this Non-Architecture/Non-Engineering Contract. The **Subconsultant Participation Solicitation Log** is used for this purpose.

PLEASE NOTE: For RFPs with a DBE goal, only participation by a NYSUCP certified DBE prime consultants/subconsultants may count towards goal attainment. For RFPs with MBE, WBE and or SDVOB goals, only prime consultants/subconsultants certified by New York State Empire State Development and/or New York Office of General Services SDVOB Program may count towards goal attainment.

Guidance concerning Good Faith Efforts in meeting D/M/WBE/SDVOB participation goals(s) is located at the end of this section.

The log is to be filled out and submitted in Part II: Cost and Administrative Proposal/Submittal. In order for a Proposal to be determined as responsive when the D/M/WBE/SDVOB participation goal is not attained at all or only partially attained, then the Proposer must complete all sections of this form and submit with a **Goal Attainment Explanation Letter**, documenting the firm's Good Faith Effort. <u>A separate Subconsultant Participation Solicitation</u> Log must be submitted for each Participation Goal established in the RFP.

\*\*DBE CERTIFICATION IS A FEDERAL PROGRAM CERTIFICATION\*\*\* IT IS SEPARATE AND DISTINCT FROM THE NEW YORK STATE MBE & WBE OR SDVOB PROGRAMS. PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS.

**Contract No.**: Enter the NYSDOT Contract Number (Example C012345)

**Participation Goal:** Enter applicable D/M/WBE/SDVOB participation goal percentage stated in the RFP.

**Page No.:** Enter 1 of 1, 1 of 2, 2 of 2, etc. Use additional forms as needed.

**Prime Name/Address/Zip Code:** Enter the name of the Prime Consultant, its address and zip code.

**Contact Person:** Enter the name of the person your firm has designated as the authorized contact person for this solicitation.

**Contact Person Telephone and Email:** Enter the telephone number (including area code) and email for the person your firm has designated as the authorized contact person for this solicitation.

# DBE/MBE/WBE/SDVOB Consultants Solicited

**Solicited Company Name and Contact Person:** Enter name of solicited firm and name of the individual associated with the firm to whom the solicitation inquiry was sent.

**Telephone (with Area Code):** Enter the telephone number of the solicited firm.

Federal Employer ID#: Enter the Federal Employer Identification Number of the solicited firm.

**Work Type(s) Being Solicited:** Enter the work type(s) or Commercial Useful Function for which the firm has been solicited in connection with the Scope of Services for this contract. NOTE: Work type codes are provided for every certified firm listed in the DBE registry. Commodity type codes are provided for every firm listed in the ESD M/WBE Registry.

**Types and Dates of Contact:** Enter the dates on which your firm contacted the solicited firm, either by mail/email (dates solicitation sent), telephone (including date and time of call), or other person-to-person contacts. Identify the type of contract by prefacing each date with "M" if a mail contact, "E" if email contact, "T" if telephone contact, and "D" if a direct meeting with the firm.

**Contact Rules:** Enter the code(s) which indicates the result(s) of your solicitation.

\*\*Use additional pages as needed\*\*

## **Code Descriptions:**

- 1. This firm is unavailable to participate in the contract for the reason(s) states on the DBE or M/WBE/SDVOB Solicitation Response. (Attach explanation to the Log)
- 2. This firm is no longer in business (NOTE: if this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that is was no longer in business was obtained. Attach the returned envelope/email showing that is was undeliverable, for instance).
- The soliciting Prime Consultant was unable to reach this firm after having a telephone conversation to follow-up on the participation solicitation inquiry. (NOTE: Indicate in the Types and Date of Contact column the dates and types at which follow-up was attempted)
- 4. This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left)

# Guidance Concerning Good Faith Efforts in Meeting D/M/WBE/SDVB Participation Goals

The following is a list of types of actions that demonstrate good faith efforts in obtaining D/M/WBE/SDVOB participation. This list is not exclusive or exhaustive. The Proposer must show that it took all necessary and reasonable steps to achieve a D/M/WBE/SDVOB goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient D/M/WBE/SDVOB participation, even if they were not fully successful.

- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, utilizing the NYSUCP directory (<a href="https://nysucp.newnycontracts.com">https://ny.newnycontracts.com</a>), or NYS OGS list of certified SDVOBs (<a href="https://online.ogs.ny.gov/sdvob/search">https://online.ogs.ny.gov/sdvob/search</a>) who have the capability to perform the work of the contract. The Proposer must solicit this interest within sufficient time to allow the D/M/WBE/SDVOBs to respond to the solicitation. The Proposer must determine with certainty if the D/M/WBE/SDVOBs are interested by taking appropriate steps to follow-up initial solicitations.
- Selecting portions of the work to be performed by D/M/WBE/SDVOBs in order to increase the likelihood that the D/M/WBE/SDVOB goal(s) will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facility D/M/WBE/SDVOB participation, even when the Proposer might otherwise prefer to perform these work items with its own forces.
- Negotiating in good faith with interested D/M/WBE/SDVOBs it is the Proposer's responsibility to make a portion of the work available to D/M/WBE/SDVOB subconsultants and suppliers and to select those portions of the work or material needs consistent with the available D/M/WBE/SDVOB subconsultants and suppliers, so as to facilitate D/M/WBE/SDVOB participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of D/M/WBE/SDVOBs that were considered, a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and evidence as to why additional agreements could not be reached for D/M/WBE/SDVOBs to perform the work.
- A Proposer using good business judgment should consider a number of factors in negotiating with subconsultants, including D/M/WBE/SDVOB subconsultants, and would take a firm's price and capabilities. The Consultant's standing within industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Consultant's efforts to meet the project goals.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining bonding, lines of credit, or insurance as required by the recipient or contract.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining necessary equipment, supplies, materials or related assistance or services.

• Effectively using the services of available minority/women-community organizations. Minority/women-contractor's groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of D/M/WBE/SDVOBs.

# **Attachment 12: Past Project Reference Form**

# **Instructions:**

- Complete one Attachment 12 for each past experience project presented.
- Attachment 12 shall not exceed two (2) pages for each project.
- Proposer's may expand the boxes as necessary.
- The term "Client" below refers to the past project owner. "Client" is NOT a Prime Contractor where the proposing firm acted in the capacity as a Subcontractor.

| Contractor where the proposing firm dete      | a in the capacity as a suscentractor.      |
|---|--|
| Past Project Experience                       | Complete below for a maximum of 5 projects |
| 1.1 Project Description #1 (include contract  |  |
| number where appropriate                      |  |
|   |  |
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|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
| 1.2 Cl' ( N                                   |  |
| 1.2 Client Name                               | ~  |
| 1.3 Client Contact Information                | Contact Name:                              |
|   | Phone Number:                              |
|   | Email Address:                             |
| 1.4 Proposed Staff for this RFP who worked on |  |
| this project                                  |  |
|   |  |
|   |  |
|   |  |
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|   |  |
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|   |  |
| 1.5 Proposed Staff role and responsibilities  |  |
| during this project                           |  |
| during this project                           |  |
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# **Attachment 13: Contract Job Title Descriptions & Qualifications**

# **Project Manager (Key)**

The Project Manager (PM) is responsible for all work necessary to provide for the general management, oversight, QA/QC, and administration of the Contract by the Consultant's management and management support personnel. The PM shall be the voice for the Proposer and for all subconsultants for all issues or concerns related to the Contract. There shall be only one PM assigned to the Contract.

# **General Function**

# Tasks:

- Primary Tasks: Contract Management and Administration
  - All work necessary to provide for the general management, oversight, QA/QC, and administration of the Consultant operations team
  - Shall be available all times during off-duty hours to provide assistance to Operations personnel
  - Participate in on-site and off-site meetings, build relationships with stakeholders, conduct tours of the TMC
  - Staff administration, performance and oversight
  - Quality control and assurance
  - Policy and directives, record keeping
- Sub-Tasks: Transition
  - All work necessary to ensure a seamless transition between the current consultant staff and future consultant staff
  - Develop transition plan for NYSDOT review and approval

# Organizational Relationship

Reports directly to the NYSDOT TMC Director

# **Minimum Qualifications**

- Education and Experience
  - Bachelors' degree in a relevant field
  - Qualifying Experience: Candidates must meet all of the following conditions (10 years of qualifying experience may be substituted in place of a Bachelor's degree):
    - TMC/Traffic/Dispatch operations with a minimum of 5 years of project management experience in TMC/Traffic operations/emergency operations with any of the following groups: Military, Transportation, Fire, Police, EMS, 911
    - At least 4 years of experience as a Project Manager for projects with a net worth of at least \$500k
    - Must have extensive experience in managing projects and tasks from inception to completion
    - Experience in supervision a minimum of 10 employees

- Knowledge Skills and Abilities
  - o Experience in writing and revising scope and cost proposals
  - Experience in developing procedures and protocols
  - o Experience in public relations

# **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

- Data analytics including economic evaluation, system evaluation and predictability and performance modeling
- Strong interpersonal skills with an ability to work with others in a team environment

# **Operations Manager (Key)**

Subconsultants may have their own Operations Manager as a Non-Key personnel

This is a professional level positions involving a variety of operational and management level duties. Responsibility for the daily operation of the INFORM control center falls in this category. Work is performed under minimal supervision and direction of the NYSDOT PM. The performance of all INFORM traffic management functions is inherent to this position. Oversee training and managing of approximately 25-30 employees including operators, H.E.L.P. dispatchers and inspectors. Coordinates activities on all shifts. Primary interface with NYSDOT and maintenance contractors for all operational outages and failures. Coordinating the deployment of all portable variable message signs and developing message content.

## **General Function**

# Tasks:

- Primary Tasks: Operations Management and Administration; Training and Updating of Procedures
- Sub-Tasks: System Operations Leads/Shift Oversight; Systems Operations; Critical Transportation Incident Support Services; Transition
- Keeps the NYSDOT Project Manager informed, on a daily basis, of all matters affecting the operations of the INFORM control center
- On call 24/7/365 for emergency and/or operational problems
- Attends meetings with the NYSDOT PM for purposes of relaying information
- Creates and distributes weekly, and monthly reports as needed
- Attends to special requests by the NYSDOT PM for gathering data and/or generating reports
- Responsible for ensuring all training materials are maintained and accessible to the System Operators
- Coordinates the daily schedules of the System Operators and ensures coverage is complete on every shift
- Ensures all personnel are informed of special events affecting the INFORM system (e.g., special signing or roadwork)
- Monitors and audits operator functions for accuracy and professionalism
- Responsible for the maintenance of all traffic signal and system maintenance files, coordinates all requests and or repairs of program "bugs" with the appropriate personnel
- Drafts memos, bulletins, requisitions, reports and other similar materials using general company guidelines
- Monitors all On-The-Job Training (OJT)
- Responsible for all System Operator IV/III functions
- Coordinate daily work with maintenance contractor, logs and administers Work Orders (WO) and payment requests

# Organizational Relationship

Reports directly to the NYSDOT PM and is, in general, the single point of contact representing the Consultant at the TMC.

# Minimum Qualifications

- Education and Experience
  - o Bachelors' degree in a relevant field with at least 1 year of qualifying work experience
  - Qualifying Experience: Candidates must meet all of the following conditions (5 years of qualifying experience may be substituted in place of a Bachelors' degree):
    - Minimum 5 years of experience in managing a TMC type facility that operates a minimum of 50 instrumental lane miles
    - Scheduling, administration, performance evaluation, hiring, employee relations, problems solving and leadership
    - Supervision of a minimum of 15 employees
- Knowledge Skills and Abilities
  - Oral and written communication
  - o Computer/Software including MS Office applications, spreadsheets and databases
  - o Personnel management
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Mentor and training new staff, and able to respond to problem situations 24/7/365

# **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

- Data analytics including economic evaluation, system evaluation and predictability and performance modeling
- Strong interpersonal skills with an ability to work with others in a team environment

# **Special Project Coordinator (Key)**

Professional level position requiring strong analytical skill and ability to perform leading management tasks at the TMC as needed.

# **General Function**

# Tasks:

- Primary Tasks: Roadwork Information and Lane Closure Coordination; Weather Forecast and Reporting; Underground Utility Locating Services Coordination; Coordination of Police Services in Work Zones and Automated Work Zone Enforcement; Critical Transportation Incident Support Services
- Perform as the Project Manager and Operations Manager when needed
- Conduct special analysis of deployed equipment, services and techniques including, but not limited to, High Occupancy Vehicle (HOV) lane performance, Clean Pass Vehicle (CPV), VMS-CCTV-Ramp Meters failure report, as requested by NYSDOT
- Attend meetings with PM for purposes of relaying information
- Coordinate special requests by NYSDOT PM for gathering data and/or generating reports
- Prepare tracking work and budget plans with maintenance contractor and assist in the logs and organization of Work Orders (WO) and payment requests

# Organizational Relationship

Reports directly to the NYSDOT PM and can perform as the PM and Operations Manager when needed

# Minimum Qualifications

- Education and Experience:
  - o Qualifying Experience: Candidates must meet all of the following conditions:
  - Bachelors' Degree in Engineering, Computer Science or Information Sciences
  - Minimum 5 years of experience with Traffic Analysis Tools
  - Minimum 2 years of supervisory experience
- Knowledge Skills and Abilities
  - Oral and written communication
  - Computer/Software including MS Office applications, spreadsheets and databases
  - Personnel management
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Mentor and training new staff, and able to respond to problem situations 24/7/365
  - Analytical and organizational kills

#### **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

- Data analytics including economic evaluation, system evaluation and predictability and performance modeling
- Strong interpersonal skills with an ability to work with others in a team environment

# **TMC System Administrator (Key)**

# **General Function**

### Tasks:

- Primary Tasks: System Operation; System Administration and Hardware/Software Support;
   Training and Updating of Manuals
- Troubleshoot hardware, software, and data communications in the event of malfunctions/errors in order to maintain and/or quickly report operational functionality to the various systems at the TMC
- Initiate tests of system programs and properly utilize computer monitor readout to detect errors and take appropriate corrective actions
- General administration of services and workstation PCs at the TMC
- Restore server or workstation from clone images
- Administer TMC systems and database applications utilizing department-provided software
- Coordinate with NYSDOT staff in other groups as needed (Information Technology, Main Office Traffic Signal Group, etc.)
- Support ITS and Traffic Signal Maintenance staff with various TMC system (Streetwise, Naztec, etc.)
- Document detailed steps taken to modify systems and procedures required to maintain current systems and implement new functionality
- Assist users with operational problems with various TMC systems
- Train System Operators in the use of TMC software applications
- Prepare workflow charts and diagrams as part of recommendations for modifications to system hardware and software

# Organizational Relationship

Reports directly to the NYSDOT PM

# Minimum Qualifications

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - Bachelors' Degree in Engineering, Computer Science or Information Sciences
  - Minimum 5 years of experience with design/development and system/database administration
  - o Minimum 2 years of supervisory experience
  - Valid Driver's License
- Knowledge Skills and Abilities
  - Electrical AC/DC and Fiber Optics
  - Telecom Cellular, Serial, TCP/IP, etc.
  - Traffic Signal Controllers, Model 170 and Model 2070L/2070E
  - Detection (Video, Radar, Acoustic, Loops, etc.)
  - o ITS Field Controller Model 2070L/2070E for Surveillance/Ramp Metering

- Database skills using MWSSQL + Server, Microsoft Excel and Access
- Streetwise (Naztec) Traffic Signal System
- INFORM ATMS/ATIS Systems or equivalent (Foundation/OpenReach by CoVal Systems, Inc.)
- Read/Interpret INFORM System record plans
- Oral and written communication
- o Computer/Software including MS Office applications, spreadsheets and databases
- o Personnel management
- Public, internal and external relations (works well with internal, external and partner groups and individuals)
- Mentor and training new staff, and able to respond to problem situations 24/7/365
- Analytical and organizational kills

# **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

• Strong interpersonal skills with an ability to work with others in a team environment

## ATIS System Support Engineer (Key)

# **General Function**

## Tasks:

- Primary Tasks: System Operation; System Administration and Hardware/Software Support;
   Training and Updating of Manuals
- Perform system software engineering work to customize new configuration of new services and equipment into current INFORM ATMS/ATIS-Architecture (Foundation and OpenReach Systems by CoVal Systems, Inc)
- Software upgrades for new ITS equipment to e NTCIP compliant and compatible with INFORM legacy system
- Programming, reconfiguration and integration of VMS, Surveillance/Ramp Meters Controllers, Travel Time Signs, detection systems, and integration of new computer services as required at TMC
- Develop and upgrade System and workstation software to enhance functionality of system
- Review current data management system and capabilities, workflow, and scheduling limitations to determine if changes to ATMS systems are required
- Documents detailed steps taken to modify systems and procedures required to maintain current systems and implement new functionality
- Troubleshoot hardware, software and data communication malfunctions/errors to maintain and/or quickly restore operational functionality
- Administration of ATMS system and database, which includes data archiving, mining and others

#### Organizational Relationship

Reports directly to the NYSDOT PM or Operations Manager

## Minimum Qualifications

- Education and Experience:
  - o Qualifying Experience: Candidates must meet all of the following conditions:
  - Bachelors' Degree in Engineering, Computer Science or Information Sciences
  - Minimum 5 years of experience with ATMS/ATIS system software
  - Minimum 2 years of supervisory experience
  - Valid Driver's License
- Knowledge Skills and Abilities
  - o Coaxial, Fiber Optics and Wireless Communication Systems
  - Freeway & Arterial Management Systems
  - VMS, CCTV, Traffic Signals, Surveillance/Ramp Metering systems and related electrical equipment
  - Detection System/Firmware (VIDS, Acoustic, Radar, Inductance Loops, RFID Transponders (TRANSMIT/EZ-Pass))
  - Telecom Cellular, Serial, NTCIP, TCP/IP, UP, multicast, IGMP

- o Model 2070, 2070L, 2070E Controllers
- MSSQL+, Microsoft Excel and Access
- o Programming Graphics, C, C++, C#, .Net, XML, JAVA, and VISUAL Languages
- Oral and written communication
- o Computer/Software including MS Office applications, spreadsheets and databases
- Personnel management
- Public, internal and external relations (works well with internal, external and partner groups and individuals)
- Mentor and training new staff, and able to respond to problem situations 24/7/365
- Analytical and organizational kills

# **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

## ITS Maintenance Contractor Inspector (Key)

# **General Function**

#### Tasks:

- Primary Tasks: Field Support Technical Services
- Inspection, supervision and working with INFORM's Contractors
- Enforcing contract technical specifications of equipment, materials and labor during field installations, repairs and modifications by Field Maintenance Contractors
- Read plans, implement and enforce Work Zone Traffic Control (WZTC)
- Prepare inspection reports including job descriptions, equipment used, MPT furnished, hours of work, travel time, etc.
- Tows, deploys and programs PVMS using instructions manual
- Maintain INFORM's Equipment Inventory at various storage facilities, organize storage facilities, receive equipment from various sources and provide updates on equipment needs
- Inspect field equipment routinely to enforce maintenance contractor's requirements to maintain field equipment
- Inspects H.E.L.P. and Parkway Tow contracts
- Cross-train to perform TMC operator tasks

## Organizational Relationship

Reports directly to the Operations Manager

#### Minimum Qualifications

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - High School diploma or equivalent
  - Minimum 3 years of experience with inspection of field equipment, supervision of electrical maintenance contractors, and preparation of inspection reports
  - Minimum 2 years of supervisory experience
  - Valid Driver's License
- Knowledge Skills and Abilities
  - Various equipment functions
  - Use of equipment manuals
  - Operation of medium Heavy Duty 4x4 pick up truck with snow plow
  - Operation of a medium warehouse forklift
  - Oral and written communication
  - Computer/Software including MS Office applications, spreadsheets and databases
  - Personnel management
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Mentor and training new staff, and able to respond to problem situations 24/7/365
  - Analytical and organizational kills

# **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

# System Operator IV (Assistant Operations Manager) (Key)

# **General Function**

## Tasks:

- Primary Tasks: Direction, Supervision and Administration of the TMC; System Operation; Roadwork Information and Lane Closure Coordination; Training and Updating of Manuals; Operations and Administration of the H.E.L.P. and Parkway Tow Contracts
- Perform as Operations Manager as needed
- Lead and direct work of INFORM System Operators
- On call 24/7 via phone
- Coordinate traffic and incident management functions
- Ensure shift co-workers are adequately trained and current in all tasks relevant to System Operators
- Shift liaison to management for identifying problems and/or weaknesses in operational procedures
- Prepares and maintains training documents and reports
- Shift continuity, assessments, briefings between shift/maintenance personnel, and overall system performance
- Assemble, collate, and prepare roadwork/construction information in order to formulate daily, weekly and OpenReach/511NY Road Work reports
- Administer On-The-Job Training
- Perform ITS Maintenance Contract Inspector and H.E.L.P. & Parkway Tow Supervisor
- System operator III, System Operator II and System Operator I responsibilities

# Organizational Relationship

Reports directly to the Operations Manager

# **Minimum Qualifications**

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - High School diploma or equivalent
  - Minimum 6 years of experience with TMC type facility and/or traffic management
  - Minimum 4 years of supervisory experience
  - Valid Driver's License
- Knowledge Skills and Abilities
  - Oral and written communication
  - Computer/Software including MS Office applications, spreadsheets and databases
  - Personnel management
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Mentor and training new staff, and able to respond to problem situations 24/7/365
  - Analytical and organizational kills

# **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

## System Operator III (Shift Supervisor) (Key)

# **General Function**

#### Tasks:

- Primary Tasks: Supervision and Administration of the TMC; System Operation; Roadwork Information and Lane Closure Coordination; Training and Updating of Manuals; Operations and Administration of the H.E.L.P. and Parkway Tow Contracts
- Coordinate traffic and incident management functions
- Ensure shift co-workers are adequately trained and current in all tasks relevant to System Operators
- Shift liaison to management for identifying problems and/or weaknesses in operational procedures
- Prepares and maintains training documents and reports
- Shift continuity, assessments, briefings between shift/maintenance personnel, and overall system performance
- Assemble, collate, and prepare roadwork/construction information in order to formulate daily, weekly and OpenReach/511NY Road Work reports
- Administer On-The-Job Training
- Perform ITS Maintenance Contract Inspector and H.E.L.P. & Parkway Tow Supervisor
- System operator II and System Operator I responsibilities

#### Organizational Relationship

Reports directly to the Operations Manager or System Operator IV

#### Minimum Qualifications

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - High School diploma or equivalent
  - Minimum 5 years of experience with TMC type facility and/or traffic management
  - Minimum 3 years of supervisory experience
  - Valid Driver's License
- Knowledge Skills and Abilities
  - Oral and written communication
  - Computer/Software including MS Office applications, spreadsheets and databases
  - Personnel management
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Mentor and training new staff, and able to respond to problem situations 24/7/365
  - Analytical and organizational kills

#### **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

# System Operator II (Traffic System Coordinator II)

# **General Function**

#### Tasks:

- Primary Tasks: System Operation; Roadwork Information and Lane Closure Coordination
- Generate and display traffic related messages on the VMS/PVMS
- Troubleshoot and resolve system related problems
- Interact with maintenance personnel on system performance
- Monitor and assist coworkers to ensure accuracy and timeliness of information
- Assemble, collate, and prepare roadwork/construction information in order to formulate daily, weekly and OpenReach/511NY Road Work reports
- Administer On-The-Job Training
- System Operator I responsibilities

#### Organizational Relationship

Reports directly to the System Operator III

#### **Minimum Qualifications**

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - High School diploma or equivalent
  - o Minimum 4 years of experience with TMC type facility and/or traffic management
  - Valid Driver's License
- Knowledge Skills and Abilities
  - Oral and written communication
  - Computer/Software including MS Office applications, spreadsheets and databases
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Mentor and training new staff
  - Analytical and organizational kills

#### **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

# System Operator I (Traffic System Coordinator I)

#### **General Function**

#### Tasks:

- Primary Tasks: System Operation
- Monitor radios/police scanners, email alerts, 511NY, OpenReach, CCTV displays, and system map for incidents
- Disseminate information to local radio and traffic monitoring
- Monitor computerized traffic signal and ramp metering activities
- Dispatch traffic signal malfunctions and highway maintenance calls to appropriate personnel or jurisdictions
- Perform record keeping tasks, keyboard entries and generate daily reports
- Monitor and update VMS/PVMS
- Generate and display traffic related messages on the VMS/PVMS

#### Organizational Relationship

Reports directly to the System Operator III

## Minimum Qualifications

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - o High School diploma or equivalent
  - o Minimum 2 years of experience with TMC type facility and/or traffic management
  - Valid Driver's License
- Knowledge Skills and Abilities
  - Oral and written communication
  - Computer/Software including MS Office applications, spreadsheets and databases
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Analytical and organizational kills

#### **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

## System Operator I (Trainee)

# **General Function**

#### Tasks:

- Primary Tasks: System Operation
- Monitor radios/police scanners, email alerts, 511NY, OpenReach, CCTV displays, and system map for incidents
- Monitor computerized traffic signal and ramp metering activities
- Dispatch traffic signal malfunctions and highway maintenance calls to appropriate personnel or jurisdictions
- Perform record keeping tasks, keyboard entries and generate daily reports
- Monitor and update VMS/PVMS

# Organizational Relationship

Reports directly to the System Operator III

# Minimum Qualifications

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - High School diploma or equivalent
  - Valid Driver's License
- Knowledge Skills and Abilities
  - Oral and written communication
  - o Computer/Software including MS Office applications, spreadsheets and databases
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Analytical and organizational kills

#### **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

# **Administrative Assistant (Key)**

# **General Function**

#### Tasks:

- Assist NYSDOT PM in administering INFORM TMC Contracts, preparing annual budgets; financial record keeping
- Assist Operations Manager in answering telephones, point of contact for visitors, filing reports, performing general office responsibilities
- Generate and submit accurate invoices to NYSDOT in a timely manner
- TMC Building Management
- Maintain up-to-date accounting system
- Perform account reconciliations
- Review and approve invoices from subconsultants
- Ensure prompt payment of subconsultant invoices
- Management recordkeeping for call contract-related correspondence ad communications
- Prepare statistical reports for H.E.L.P. and Parkway Towing contracts
- Process H.E.L.P. and Parkway Towing invoices

#### Organizational Relationship

Reports directly to the System Operator III

## **Minimum Qualifications**

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - High School diploma or equivalent
  - Valid Driver's License
- Knowledge Skills and Abilities
  - Oral and written communication
  - Computer/Software including MS Office applications, spreadsheets and databases
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Analytical and organizational kills

#### **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

## **Transportation Analyst III**

# **General Function**

#### Tasks:

- Primary Tasks: Roadwork Information and Lane Closure Condition; Weather Forecasting and Reporting; Underground Utility Locating Services Coordination; Critical Transportation Incident Support Services; System Operation
- Assist TMC and NYSDOT in informing the public and partner agencies on the impact of construction, maintenance, and other activities
- Ensure that work zone scheduling confirm to NYSDOT policies
- Assume a quality assurance role to ensure that NYSDOT;s external condition reporting systems (OpenReach and 511NY) are timely and accurate
- Collect, analyze and report on TMC performance of the Transportation Network
- Assist in implementing Transportation Incident Management (TIM) procedures
- Assist in TMC asset management and recordkeeping
- Conduct TMC/TSMO related studies/investigations
- Assist in ITS scope development
- Work with contractors to correct reporting deficiencies in TMC systems
- Assist with day-to-day TMC operations and provide support to System Operators
- Roadwork Condition Information and Coordination proactively assisting NYSDOT in minimizing the impact of weather, construction, maintenance, and other conditions/activities on the monitoring public
- Construction and maintenance activities
- Weather reporting
- Performance measures; traffic data collection, analysis & reporting provide traffic data collection services, fulfill requests for archived data records and generate traffic data reports using the traffic detection and data collection functions of the ITS
- ITS Data Quality Assurance Services review and support the goal of accurate and timely distribution of traveler information to existing future electronic media outlets; regularly review system generated reports from TMC for accuracy, as well as compile and electronically store relevant ITS system data
- Transportation Analyst II and I responsibilities

## Organizational Relationship

Reports directly to the Operations Manager and TMC Director

#### Minimum Qualifications

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - Bachelors' degree or higher in related field with a minimum of National Institute for Certification in Engineering Technologies (NICET) level 2; AND
  - Minimum 5 years of equivalent work experience in construction inspection, supervision or management with experience in roadwork and work zone traffic control (WZTC)

- Knowledge Skills and Abilities
  - Oral and written communication
  - Computer/Software including MS Office applications, spreadsheets and databases
  - Work Zone Traffic Control design and/or implementation
  - Data analysis including economic evaluation, systems evaluation and predictability/performance evaluation
  - Experience with mapping (ArcMap, ArcView, etc.)
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Supervision of employees
  - o Analytical and organizational skills

## **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

Strong interpersonal skills with an ability to work with others in a team environment Performing multiple tasks simultaneously and independently Ability to train others

## Transportation Analyst II/I

# **General Function**

#### Tasks:

- Primary Tasks: Roadwork Information and Lane Closure Condition; Weather Forecasting and Reporting; Underground Utility Locating Services Coordination; Critical Transportation Incident Support Services; System Operation
- Assist TMC and NYSDOT in informing the public and partner agencies on the impact of construction, maintenance, and other activities
- Ensure that work zone scheduling confirm to NYSDOT policies
- Assume a quality assurance role to ensure that NYSDOT;s external condition reporting systems (OpenReach and 511NY) are timely and accurate
- Collect, analyze and report on TMC performance of the Transportation Network
- Assist in implementing Transportation Incident Management (TIM) procedures
- Assist in TMC asset management and recordkeeping
- Conduct TMC/TSMO related studies/investigations
- Assist in ITS scope development
- Work with contractors to correct reporting deficiencies in TMC systems
- Assist with day-to-day TMC operations and provide support to System Operators
- Roadwork Condition Information and Coordination proactively assisting NYSDOT in minimizing the impact of weather, construction, maintenance, and other conditions/activities on the monitoring public
- Construction and maintenance activities
- Weather reporting
- Performance measures; traffic data collection, analysis & reporting provide traffic data collection services, fulfill requests for archived data records and generate traffic data reports using the traffic detection and data collection functions of the ITS
- ITS Data Quality Assurance Services review and support the goal of accurate and timely distribution of traveler information to existing future electronic media outlets; regularly review system generated reports from TMC for accuracy, as well as compile and electronically store relevant ITS system data

#### Organizational Relationship

Reports directly to the Operations Manager and TMC Director

#### Minimum Qualifications

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - Bachelors' degree or higher in related field with a minimum of National Institute for Certification in Engineering Technologies (NICET) level 2; AND
  - Transportation Analyst II Minimum 4 years of equivalent work experience in construction inspection, supervision or management with experience in roadwork and work zone traffic control (WZTC)

- Transportation Analyst I Minimum 2 years of equivalent work experience in construction inspection, supervision or management with experience in roadwork and work zone traffic control (WZTC)
- Knowledge Skills and Abilities
  - Oral and written communication
  - o Computer/Software including MS Office applications, spreadsheets and databases
  - Work Zone Traffic Control design and/or implementation
  - Data analysis including economic evaluation, systems evaluation and predictability/performance evaluation
  - Experience with mapping (ArcMap, ArcView, etc.)
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Supervision of employees
  - o Analytical and organizational skills

#### **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

Strong interpersonal skills with an ability to work with others in a team environment Performing multiple tasks simultaneously and independently Ability to train others

# System Engineer II/I

# **General Function**

#### Tasks:

- Primary Tasks: System Administration and Hardware/Software Support; Field Support Technical Services
- Facilitate and coordinate the installation, operation, repair, relocation and maintenance of TMC's ITS and networking hardware and software
- System security and performance
- Provide day-to-day Information Technology (IT) hardware, software and network administration support services to the TMC ATMC/ITS network/systems, and computers
- Coordinating flow of information between TMC, contractors and other outside agencies
- Security, monitoring and evaluation of new and existing TMC hardware and software system
- Provide technical support services outside normal work hours
- Provide ITS field support operation & technical services

#### Organizational Relationship

Reports directly to the Operations Manager and TMC Director

#### Minimum Qualifications

- Education and Experience:
  - o Qualifying Experience: Candidates must meet all of the following conditions:
  - Bachelors' degree or higher Information Technology or Computer Science with the following certifications: CCNA, CCNA Routing and Switching; CCNA Security, and MSCA; AND
  - System Engineer II Minimum 6 years of equivalent work experience IT network setup, security and administration
  - Transportation Analyst I Minimum 4 years of equivalent work experience IT network setup, security and administration
- Knowledge Skills and Abilities
  - Oral and written communication
  - o IT network and computer design and building
  - Troubleshooting system security
  - Configuration and documentation
  - Computer software including MS Office applications, spreadsheets and databases
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Supervision of employees
  - Analytical and organizational skills

#### **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

Strong interpersonal skills with an ability to work with others in a team environment Performing multiple tasks simultaneously and independently Ability to train others

## **Field Technician**

# **General Function**

#### Tasks:

- Primary Tasks: Field Support Technical Services
- Assist NYSDOT TMC personnel in asset management and recordkeeping
- Troubleshoot ITS/communication/network failures that include upgrading, replacing, configuring, installing, adjusting/reconfiguring, and repairing field devices
- Confirm functional and intended displays of DMS messages
- Investigate reports of equipment malfunctions
- Inventory operational status of ITS equipment
- ITS maintenance contractor oversight and coordination

## Organizational Relationship

Reports directly to the System Engineer and Operations Manager

## **Minimum Qualifications**

- Education and Experience:
  - Qualifying Experience: Candidates must meet all of the following conditions:
  - Associates Degree or higher in Electrical Engineering or Electrical Engineering Technology,
     Computer Science or Information Technology; OR
  - 2 years of full-time employment as a service technician in the field of Telcom, Electrical Technology, or Information Technology
- Knowledge Skills and Abilities
  - Oral and written communication
  - Computer/software including MS Office applications
  - Plan or schematic reading
  - Field work on varying terrain and weather conditions
  - Electronics troubleshooting and repair/replacement of electronic devices (e.g., modems, switches, and routers)
  - Public, internal and external relations (works well with internal, external and partner groups and individuals)
  - Supervision of employees
  - Analytical and organizational skills
  - Valid driver's license

#### **Desired Qualifications**

It is desired, but not required, that candidates for this position also be proficient in the following areas:

Strong interpersonal skills with an ability to work with others in a team environment Electrical safety and systems with knowledge of electric codes and safe working practices Wireless (radio and cellular) and fiber optic communication

## **Attachment 14: Scope of Services Detailed Task Descriptions**

# Task 1 – Direction, Supervision and Administration of the Transportation Management Center (TMC)

#### **SUMMARY**

Task 1 consists of work necessary to manage, direct, supervise, and administer the INFORM system by the Consultant's management and management support personnel. It also includes supply procurement and participation in meetings as directed by NYSDOT. The Consultant shall be organized to provide a single point of contact (project manager/director) to NYSDOT.

## <u>Sub-Task Descriptions</u>

- 1.1 The Consultant shall employ, train, schedule, and supervise control roll operators, dispatchers and field support personnel. This shall include accommodating vacations, sick leave, and other absences of operations personnel, by training and supervising relief operators, dispatchers and on-call personnel to ensure continuous 24/7/365 TMC operations. Ensure proper coverage at all times, including during weekends, adverse weather events, states of emergencies, Holidays, special events, ICS activations, etc. In addition, it is anticipated that the Consultant may be required to hire at least one trainee during the bast term of the Contract.
- 1.2 The State may upgrade the application programs in the INFORM control center from time to time. Upon request of the State, the Consultant shall schedule necessary time during normal working hours for the State to work on upgrading said programs.
- 1.3 The Consultant shall assist the State with establishing repair priority for failed equipment. The Consultant's personnel will often be the first to know of an equipment failure and shall be responsible for issuing a Work Order (WO) for equipment repair (See Task 2). Helping to establish priorities for repair of failed/aged equipment shall also be considered part of this task.
- 1.4 The Consultant shall provide supplies and/or required services for INFORM control center use and operations. The supplies and/or required services to be procured include, but are not limited to, computer paper, fax machine paper, computer printer cartridges, computer tapes and disks, form, logs, diaries, recordkeeping supplies, communications services, repeater charges, minor computer and equipment repairs, etc. The purchase shall be issued by the Consultant and paid by the State as a direct cost of the Contract. All purchasing shall follow the NYS Procurement Guidelines and will be subject to preapproval by NYSDOT TMC Director.
- 1.5 The Consultant shall respond to inquiries about INFORM operations as directed by NYSDOT. Inquiry responses involve telephone conversations, providing supporting data for evaluation and use by the NYSDOT transmittal of pre-printed materials, accommodation of visitors at the INFORM control center, providing tours of the INFORM building to visitors, and attending meetings at locations from the INFORM control center.
- 1.6 The Consultant shall maintain records and documentation as directed to support the overall operations of the INFORM control center. This includes websites, statewide and inter/intra-agency databases.

- 1.7 The Consultant shall prepare schedules for all tasks related to INFORM operations. Schedules of tasks will be pre-approved by the State.
- 1.8 At the start of the Contract the Consultant shall provide six(6) vehicles to be used exclusively as part of operations activities by Consultant staff. These vehicles shall display INFORM and R10 logos as specified by the State. The costs of these project vehicles will be paid by the Consultant as a Direct Non-Salary Cost of the Contract. The procurement methods for these vehicles shall follow the New York State procurement guidelines and require pre-approval by the State. All vehicles shall be model year 2023 or newer. For estimation purposes:
  - Five Four (4) of these vehicles shall be 4-Weel Drive Super Heavy Duty ¾ Ton Crew Cab Pick Up Trucks with trailer towing package including towing side mirrors and towing capacity of at least 8,000 lbs;
  - Two (2) large 4-Wheel Drive multiple passenger utility vehicle capable of mounting curbs at freeway speeds (40 MPH), with a trailer towing package of at least 8,000 lbs
  - All vehicles shall be fitted with the appropriate light bars and flashing strobes as approved by the State. Consideration to assuming lease on existing vehicles, if cost effective and if pre-approved by the State.
  - All vehicles shall be equipped with a NYSDOT approved Verizon Networkfleet or any other equivalent AVL (Automatic Vehicle Location) System with the following modules:
    - Vehicle and Driver Management and Diagnostic Reporting
    - Fleet Maps
    - Safety and Security Management
    - The Consultant shall arrange to provide NYSDOT staff with full access to the AVL feeds
- 1.9 The Consultant shall participate in post-incident debriefings, with all agencies and vendors involved in managing a major traffic incident, to determine whether existing operating procedures should be changed. This work also includes travel to meetings away from the INFORM TMC. The Consultant shall participate in traffic incident management procedure meetings to update operating procedures in the TMC.
- 1.10 The Consultant shall provide coverage for operations and dispatchers and Task 3 personnel during scheduled and unscheduled absences. Personnel assigned to this Task may be assigned to accomplish duties under Tasks 2 and 3 when personnel assigned to those tasks are absent. However, personnel assigned to this Task shall not have regularly scheduled duties under Tasks 2 and 3.
- 1.11 The Consultant shall provide coordination of special events which includes attending meetings, preparing messaging plans, VMS deployment plans, providing personnel at the venue the day of the event, attending post-event meetings and preparing lessons learned reports.
- 1.12 The Consultant should coordinate any needed Emergency PVMS deployments including during nights & weekends.

- 1.13 The Consultant shall follow NYS Incident Management Strategies and Practices in order to provide coordination with key stakeholders, such as law enforcement officers and other emergency responders, as needed.
- 1.14 The Consultant shall administer the Region's HOV Clean Pass Vehicle Monitoring Program.
- 1.15 The Consultant may be required to coordinate operational policy, procedures and activities to improve operational consistency between downstate TMC's (NYSDOT Regions 8, 10 & 11). Activities would include, but are not limited to:
  - Schedule and facilitate coordination meetings
  - Review and revise policies and practices to implement best practice
  - Develop/conduct related training
  - Perform post incidents and operations reviews
  - Coordinate planning of special events impacting the three NYSDOT downstate regions.

#### **Task 2- System Operation**

#### **SUMMARY**

This task consists of work necessary to provide human monitoring of the INFORM automated traffic management system and performance of manual tasks necessary for the system's effective operation and the operation of the INFORM control center.

# **Sub-Task Descriptions**

- 2.1 The Consultant shall provide human monitoring of traffic surveillance equipment for traffic operation management at the INFORM TMC. It is anticipated that the Consultant will be directed to provide a minimum of three (3) persons at all times for operation of the System. During peak hours on weekdays, special events and/or emergency conditions greater levels of staffing shall be required. The Operations Manager shall be staffed at the INFORM TMC, at a minimum, during the core hours of 8:00am 4:00pm, Monday through Friday.
  - Consultant personnel normally assigned to Task 1 shall not be scheduled as an operator on a regular basis. These personnel may be used as unscheduled relief operators when operators are absent on short notice.
  - Human monitoring of traffic control device operations by the TMC central processor includes, but is not limited to, monitoring and interacting with the ATMS traffic control system that select timing patters for traffic signals on arterial streets; special programs for ramp meters operations; and the central processor computer programs that select messages for variable message signs and travel time signs. Each of these sets of computer programs provides for operator dialog using computer terminals.
- 2.2 The Consultant shall frequently review the INFORM's equipment performance monitoring system. The INFORM central processor announces failures of field equipment and sound alarms. System Operators shall acknowledge equipment failure, and evaluate the system reported failure, through a series of operational procedures. Upon human verification of an equipment failure, the Consultant shall call for appropriate repairs. The process for ordering repairs by the Consultant shall involve written forms, log books, and telephone

- calls to maintenance contractors, the receipt of phone calls from maintenance contractors, and related work.
- 2.3 The Consultant shall reconfigure the INFORM system as needed. Upon failure of the TMC equipment, and upon return t operation of failed equipment, System Operators may need to manually intervene in the reconfiguration process to restore its operation, as before the failure.
- 2.4 The Consultant shall provide human monitoring of the INFORM VMS system. Human monitoring of the VMS processor may include approval of every legend prior to its display, and verification that the approved legend is displayed. Normal selection of sign legends may be computer programs in the INFORM central processor from a State approved library. The System Operators may also command the VMS processor to display legends from the State approved library and compose unique legends, using the computer terminal.
- 2.5 The Consultant shall provide management of traffic incidents. Incident management shall be performed in accordance with existing and new standard operation procedures.
- The Consultant shall provide human monitoring of 511NY, T-REX, and NYALERT websites in addition to CCTV, police radio scanners, radio transmissions, and weather stations. 511NY monitoring should include a human check of all CMS messages, CCTV feeds quality, roadwork incidents, etc. on the 511NY website at least multiple times per week.
- 2.7 The INFORM System Operators shall answer phone inquiries from agencies and private citizens and provide them with the necessary information about traffic conditions. All operators shall be respectful and professional to all callers. Any media calls should be forwarded to the Regional NYSDOT Public Information Officer or their designee.
- 2.8 The Consultant shall accept telephone reports from police or other authorized personnel regarding the malfunctioning of any State-owned traffic signals in Nassau and Suffolk Counties, and subsequently notify the appropriate State and Contractor personnel of the needs for repairs. The Consultant shall keep records of all reports of traffic signal malfunctions and shall record the maintenance contractor calls that verify their receipt of the maintenance requests and their notification to INFORM of the completed work.
- 2.9 The Consultant shall operate and display messages on portable changeable message signs from the INFORM control center. Communications to these signs is by means of telephone lines and modems. The software used to control these signs is by means of cellular telephone modems. Some of the software used to control these signs is different that that used for the INFORM system permanent signs.
- 2.10 The Consultant shall have daily exchange of information from TRANSCOM and NYS. INFORM frequently responds to requests from TRANSCOM for messages on the INFORM VMS. These messages typically concern traffic problems or construction activities on facilities that are major links on the area-wide transportation network. This type of interaction occurs at least once a week. TRANSCOM is routinely notified about major problems on roads in the INFORM network. Occasionally, TRANSCOM members use their VMS to warn motorists about problems on Long Island roads. There is TRANSCOM workstation in the INFORM control center, however, most important traffic information is exchanged through telephone conversations.

- 2.11 The Consultant's INFORM System Operators shall monitor road conditions on available CCTV feeds for any road icing, flooding, etc. and dispatch NYSDOT personnel if needed.
- 2.12 The Consultant's INFORM System Operators shall determine the level of a roadway incident as per the most up to date NYSDOT regional notification guidelines.
- 2.13 The Consultant's INFORM System Operators shall apply the appropriate diversion plan for a section of roadway closure that is expected to last for four (4) hours or longer and coordinate the regional response to any long-term closures as needed.
- 2.14 The Consultant's INFORM System Operators shall be required to coordinate special events by posting VMS messages regarding roadway conditions or closed roads, updating/changing them as needed. System Operators may apply alternate signal timing plans or other incident management procedures.

## Task 3 – System Administration and Hardware/Software Support

#### **SUMMARY**

This Task consists of work necessary to support the INFORM TMC software applications and to provide technical assistance in resolving problems encountered with the operation of traffic equipment in the field as needed. The Consultant shall modify configuration parameters whenever new elements are added or existing devices are removed.

#### **Sub-Task Descriptions**

- 3.1 The Consultant shall evaluate and recommend changes to system functionality. This includes testing software programs running on the INFORM computers and checking for proper operation. The Consultant shall thoroughly document functionality and configuration changes.
- 3.2 The Consultant shall provide services to identify problems encountered, with the operation of field located equipment and the communication network (on an as needed basis, based on equipment malfunction reports). These services shall include, but not be limited to, troubleshooting field equipment and TMC related equipment and services.
- 3.3 The Consultant shall backup the system software and archive data history records on a daily basis.
- 3.4 The Consultant shall provide (as directed by the State), through a State approved qualified software vendor, software support services for the INFORM central software system. The costs associated with these support services for the INFORM central software will be paid by the State as a direct cost of the contract. A maximum additional direct non-salary cost (subcontractor) of up to \$375,000 per year will be included in the Cost Proposal to cover these costs.
- 3.5 The Consultant shall assist the State in the maintenance of the INFORM website and related database.

# Task 4 – Operations and Administration of the Highway Emergency Local Patrol (H.E.L.P.) and the Parkway Tow Contracts

#### **SUMMARY**

This task consists of the work necessary to monitor the H.E.L.P. program including vehicle dispatch operations, and Parkway Tow Contractor operations.

# **Sub-Task Descriptions**

- Local Patrol (H.E.L.P.) vehicles patrolling selected limited access highways within Nassau and Suffolk Counties. H.E.L.P. drivers provide roadside assistance to motorists. Fifteen (15) H.E.L.P. vehicles are currently patrolling the highways between the hours of 6:00am and 10:00am and again from 3:00pm to 7:00pm, Mondays through Fridays. During ICS activations H.E.L.P. trucks may be required to run all day and on weekends. The equivalent of one full-time dispatcher shall be required to handle communication with H.E.L.P. operators during the H.E.L.P. program patrol periods. If during the term of the Contract, the roadways and/or hours covered by H.E.L.P. increase, the State may deem that additional manpower is necessary to operate the expanded program. In this case, the Consultant will be authorized by the State to provide extra personnel using available Contract funds and salary rates established in the Contract. The State may also reduce the number of dispatchers based upon operational needs.
- 4.2 Dispatchers shall keep in contact with H.E.L.P. vehicle drivers using communication devices provided by the State. Dispatchers shall maintain detailed records of conversations showing when each driver began patrol, took breaks, and ended patrol. Records shall also be maintained regarding all stops made and services rendered by drivers. Standard forms have been developed for this purpose. Such records shall be entered into a computer database system to provide for easy analysis by Consultant personnel responsible for administration of the H.E.L.P. program. The dispatchers may need to contact Parkway Tow contractors to dispatch a Tow driver upon request from the H.E.L.P. driver.
- 4.3 The Consultant shall provide one ITS Maintenance Contract Inspector to monitor H.E.L.P and Parkway Tow Contract operators to verify they adhere to their contractual agreements. The ITS Maintenance Contract Inspector shall make sure the H.E.L.P. trucks are on "beat", inspect to ensure "Daily Equipment Log" is complete, inspect to ensure all needed equipment on the H.E.L.P. truck is in good working condition, check truck & river appearance and ensure all safety apparel is worn. They also do inspections at H.E.L.P. company facilities to verify the required contractor reports and records are being maintained as per the H.E.L.P. contract. Weekly inspections of the Parkway Tow contractor facilities shall be made by these inspectors. They shall inspect all files to ensure Parkway Tow contract provisions are being adhered to. The ITS Maintenance Contract Inspector working hours shall be from 11:30am to 8:00m with a ½ hour meal break, Mondays through Fridays.
- 4.4 The Consultant shall provide one ITS Maintenance Contract Inspector to act as the H.E.L.P. and Parkway Tow Program Administrator to help with the investigation of complaints and inquiries regarding the H.E.L.P. and Parkway Tow programs. The ITS Maintenance Contract Inspector shall prepare letters and reports, follow the proper 907 vehicle disposition process, review invoices, attend statewide meetings, prepare for

regional quarterly meetings, maintain records and assist in billing. The H.E.L.P. and Parkway Tow program administrator working hours shall be from 5:30am to 2:00pm with a ½ hour meal break, Mondays through Fridays.

#### Task 5 – Roadwork Information and Lane Closure Coordination

#### **SUMMARY**

This task consists of work to assist NYSDOT in minimizing the impact of construction, maintenance, and other roadwork-related activities on the traveling public.

# **Sub-Task Descriptions**

- 5.1 The Consultant shall operate the NYSDOT's 511NY information service. The Engineer-in-Charge will send faxed correspondence to the INFORM control center each workday describing planned construction activities and lane closures for the following workday. The INFORM personnel currently record and input updated messages concerning these lane closures as often as needed.
- 5.2 The Consultant shall assist NYSDOT in ensuring that disruption of traffic flow due to construction, maintenance, and other activities is minimized. Everyone involved in work on State highways, including Engineers-in-Charge of construction projects, personnel from NYSDOT roadway and bridge maintenance, survey, and technical services groups, private contractors and utility companies, will notify INFORM of their need to close lanes. The notification requirement is expected to apply to all State highways in Nassau and Suffolk Counties and major limited access highways n the eastern section of Queens County. Notification of the need to close lanes will normally be required from contractors, etc., at least seven (7) days in advance of the event. However, little or no advance notice can be expected to occur in emergencies. In most cases notification to INFORM will be received via email or on a fax machine supplied by the State.
- 5.3 The Consultant shall systematically review the information received from contractors, etc., on a daily basis, and identify those locations where competing needs to close lanes will cause significant traffic delays. The Consultant shall notify all parties for which a conflict is identified. It will be the responsibility of the competing parties, to resolve the conflict amongst them. If the involved parties cannot agree upon who has priority, they shall refer the matter for resolution to the NYSDOT personnel designated by the Regional Director.

# Task 6 – Coordination of Police Services in Work Zones and Automated Work Zone Enforcement

## **SUMMARY**

This task consists of reviewing work zone closure location information from NYS construction and maintenance and requesting police assistance from those agencies for such operations. This process shall be done daily by the consultant Special Coordination Team (SPT) for all roadway operations and distributed to the determined contact lists the day prior.

## **Sub-Task Descriptions**

- 6.1 The Consultant shall compile all Work Zone closure location information from NYS construction and maintenance.
- 6.2 The Consultant shall review each scheduled Work Zone closure and determining/prioritizing the level of police service required at each lane closure.
- 6.3 The Consultant shall review the closure information and prioritized lists with TMC Director or designee.
- 6.4 The Consultant shall transmit prioritized information to the New York State Police (NYSP), Nassau County Police, and Suffolk County Police.
- 6.5 The Consultant shall generate tracking reports for the task budget and review with the TMC Director or designee.
- 6.6 The Consultant shall transmit compiled Work Zone list to the designated automated work zone enforcement coordinator and contractor.

## Task 7 – Field Support Technical Services

#### **SUMMARY**

This task covers work by the Consultant in support of NYSDOT staff located in field-related technical services. The technical services include review of work by the maintenance contractor and may include inspection of work of other construction contractors; review of minor construction or construction repairs preparation and processing of records related to INFORM field equipment that is damaged by third parties; investigation of damage caused by incidents to assist the State in recovering costs for damages from responsible parties; and related services as may be requested by NYSDOT. During the term of this Contract it is anticipated that the number of roadways covered by INFORM may increase. If the State deems that additional manpower is necessary to support the expanded system, the Consultant will be authorized to provide extra personnel.

# **Sub-Task Descriptions**

- 7.1 The INFORM field hardware is maintained by the State through independent contractors. The Consultant and NYSDOT personnel will report identified equipment failures to the applicable independent contractor and request that corrective actions be taken. Under this task, the Consultant shall monitor the activities of the independent maintenance contractor, by field verification of repair actions. This includes, but is not limited to, recordkeeping, indicating repair actions and appropriate cost information for verifying contractor payment.
- 7.2 The Consultant shall provide overtime support services as required. These overtime support services may be needed for participation in review and inspection of major repairs, to being the recordkeeping process, field reviews required to identify or verify major maintenance action, additional hours beyond standard working hours to address backlogs of work that may occur, and other unforeseen circumstances. The Consultant shall provide these required overtime services using the full-time staff assigned to the overall task or with other project staff as applicable. A representative from the Consultant shall be on-call at all times.

- 7.3 The Consultant shall routinely inspect INFORM cabinets, signs, other equipment and hardware to ensure that the INFORM maintenance contractor's work is acceptable.
- 7.4 The Consultant shall conduct regularly scheduled patrols of State highways and prepare a monthly inventory of the conditions of the different INFORM ITS equipment.
- 7.5 The Consultant shall maintain the INFORM equipment inventory. This consists of maintaining records of all field equipment, including the contents of each field cabinet, maintenance records of all equipment issued to the maintenance contractors, and keeping an inventory of all equipment on-hand at the storage facilities. This shall also consist of the issuing and receipt of equipment at the INFORM warehouse to and from the Contractor or State personnel.
- 7.6 The Consultant shall transport and deploy PVMS to various sites where signs are needed for traffic management. At this time, it is estimated that the Consultant shall be responsible for deployment of approximately one hundred-fifty (150) PVMS. The Consultant shall be responsible for posting messages on additional PVMS which will be located at semi-permanent locations. The Consultant shall keep inventory of all deployed PVMS, speed trailers, and portable CCTV trailers that shall include the location of the trailers. The Consultant shall also perform routine maintenance on all portable ITS equipment.
- 7.7 The Consultant shall monitor the INFORM maintenance contractor performance. This shall include the daily review of INFORM generated failure reports and work orders, and the maintenance contractor's written responses to the reports and work orders. The Consultant shall prepare monthly performance reports and expedite the processing of all work orders, invoices and other critical paperwork associated with the day-to-day operations of the INFORM system.
- 7.8 The Consultant shall inspect and approve all Construction contracts' PVMS signs prior to use on State projects. They shall ensure the signs are in working condition and remote connection to these PVMS signs is working from the INFORM building. The Consultant shall occasionally post messages on these signs as needed.
- 7.9 The Consultant shall perform minor INFORM building maintenance/repair activities like plowing the parking lot, changing light bulbs, maintaining warehouse and secure storage areas, etc.

#### Task 8 – Weather Forecasting and Reporting

#### **SUMMARY**

This task consists of reviewing public and government websites and preparing weather forecast reports. During periods of normal weather, reports shall normally be prepared and distributed as period daily forecasts. Additional forecast reports and updates shall be completed during and in preparation of inclement weather conditions, such as snowstorms, tropical storms, hurricanes, flood events or other weather conditions that requires specific forecast information.

## **Sub-Task Descriptions**

- 8.1 The Consultant shall use the most recent update sent to the weather group (WEA) as a stating template for the current one. Delete the most recent day and add Day 8 (e.g., next Friday for a forecast prepared on a Friday)
- 8.2 The Consultant shall review the following websites (at a minimum)"
  - www.weather.gov/okx The local (Upton) National Weather Service (NWS). This site contains daily future forecasts for six (6) days for any location desired on Long Island (Region 10). Includes current hourly weather observations and hourly observations taken during the last 72 hours. Forecasts are in multiple text and graphic form that enable interpretation of expected temperature, precipitation, wind direction and speed, humidity, etc. Islip is used as a point and click forecast as a template but will typically consult forecasts from other locations (e.g., North Shore vs, South Shore, East End vs. Western Nassau) to assess the variety of conditions throughout Long Island to be covered. The point location text forecast can be used verbatim by anyone as a backup person. They are used as a starting template and a reasonableness check on the weather updates are independently produced.
  - Weather Prediction Center (WPC) Home Page (noaa.gov)- Has a vast amount of current and forecast weather information continuously updated by US NOAA Weather Prediction Center. Weather updates are largely based on independent study of the text and graphics products at this site. These products are useful mainly for professional meteorologists; the average person would not be expected to use them without substantial training, as most of the text products rely extensively on weather jargon.
  - www.wunderground.com/maps/radar/current Provides a graphical depiction of National Weather radars, so that the forecaster can identify areas of precipitation, intensity, differentiate between rain, snow and other precipitation types, and recent movement. This is a free, non-government site that is visually effective.
  - Model Guidance: Areas and Models (noaa.gov) NOAA computer model graphics output site. Forecaster uses numerous products on this site to assess the differing results of individual US weather forecast models regarding storm tracks, intensity, resulting precipitation and timing. This is essentially "raw" data and needs extensive interpretation by a meteorologist.
  - www.accuweather.com Free private sector forecast information that the forecaster uses to compare with the draft weather update and with other forecast sources as a reasonableness check. Is somewhat difficult to navigate but has useful independent data and forecasts.
  - www.nhc.noaa.gov NOAA's tropical weather site. Forecaster uses this
    information verbatim for the 5-day outlook of possible tropical storm or
    hurricane information. Site also has forecast track and intensity predictions of
    storm that do form, which the forecaster includes and do not modify.
  - www.clearpathweather.com Private forecast services contracted through NYSDOT's Main Office. It is the source of pavement temperature, hourly

- precipitation and snowfall forecasts for six (6) Long Island Road Weather Information Systems (RWIS) locations. The forecaster extracts this data to an Excel spreadsheet developed at INFORM without modification. The raw data are only accessible by licensed users. Also produced daily weather forecasts out to ten (10) days, which the forecaster uses as a reasonable check on updates.
- www.tropicaltidbits.com Free website maintained by a private individual, that contains European forecast model output information out to ten (10) days that the forecaster uses as a supplement to the American models found at other sites.
- There are also numerous other public and government websites that the forecasters often review on an intermittent basis or for specialized information.
- 8.3 The Consultant shall generate reports that use the information obtained from the weather websites. Forecast reports shall combine the data into a compact weather update prepared for each day out to Day 8 and for a Day 8-14 long range outlook. Information about tropical weather systems, potential for coastal or roadway/urban flooding, RWIS roadway information, fog potential, and the official NWS watches and warnings shall be included as requested and/or needed.
- 8.4 Forecast reports shall include a percent probability of precipitation (e.g., 30% change or 90% chance) based on the likelihood of precipitation and indicates whether light or heavy precipitation is expected. When rain or snow is expected, the forecast report shall include estimated ranges of likely or possible amounts (e.g., 0.25-0.50 inches of rain or 4-6 inches of snow) for a specified time.
- 8.5 Typically, a daily forecast report is required each day during the normal work week, Monday through Friday. The weekday daily forecast reports are expanded to include weekend coverage as appropriate. However, during severe weather threats more than one weather forecast report update per day may be required as requested by NYSDOT, sometime as many as 5 or more.

# Task 9 – 811 Underground Utility Locating Services Coordination

#### **SUMMARY**

The 811 Underground Utility Locating Services (UULS) contractor locates NYSDOT owned underground infrastructure associated with Traffic Signals, Roadway Lighting, Bascule Bridges, and Intelligent Transportation System (ITS) equipment locations in NYSDOT Region 10.

The INFORM Maintenance Contractor (ICM) typically locates and marks out NYSDOT owned ITS underground infrastructure within NYSDOT Right-of-Way. These mark-out requests may come from the 811 ticket system or directly from NYSDOT Construction/Maintenance.

This task consists of Consultant review, monitoring, and status reporting of the 811 UULS mark0out request ticket system database and generating, coordinating, and status monitoring of any 811 ticket related mark-out work orders that may be required to be performed by the INFORM Maintenance Contractor.

# **Sub-Task Descriptions**

- Perform a daily screening of the 811 system mark-out request ticket database to determine which are NYDSOT R10/INFORM related mark-out requests.
- 9.2 Perform a daily review of the screened NYSDOT R10/INFORM related marl-out requests and any mark-out requests coming directly from NYSDOT Construction/Maintenance to determine need for IMC ITS (inside NYSDOT Right-of-Way) mark-out work orders. The Consultant shall use the INFORM record plans and other infrastructure information provided by NYSDOT to perform the review.
- 9.3 Generate, monitor and track the status of IMC locate and mark-out work orders as required.
- 9.4 Update the 811 system ticket database as appropriate with IMC locate and mark-out complete status. Update Construction/Maintenance on status of any mark-out requests coming directly from them.
- 9.5 Track and compile status reports for 811 mark-out request tickets, Construction/Maintenance mark-out requests, and IMC work orders.

## Task 10 – Critical Transportation Incident Support Services

#### **SUMMARY**

This task consists of supporting TMC operations during higher-level incidents, emergencies, snow, storms and other significant events to gather, coordinate, and report factual incident management, traffic conditions and transportation network status to NYSDOT staff via Transportation System Status Reports, email, phone or fax communications in accordance with current and future NYSDOT standard operating procedures. Responsibility includes real-time traffic and resource information and coordination with Statewide and partner agency emergency centers.

#### <u>Sub-Task Descriptions</u>

- 10.1 Assist the TMC, Office of Operations, and Incident Command Team with notifications and reporting.
- 10.2 Interface with NYSDOT staff, TMC partner agencies, and other agencies to ensure TMC has accurate and updated transportation information to report to NYSDOT management and the Statewide Transportation Information & Coordination Center (STICC).
- 10.3 Attend meetings at NYSDOT or other agency offices to become familiar with emergency management and incident information flows.
- 10.4 Establish and maintain working relationships with transportation information contacts, and continually update optimize critical incident and event information sharing among TMC partners and involved parties.
- 10.5 Develop TMC communication protocols and maintain contacts with agencies and organizations to ensure TMC receives and reports accurate, consistent and timely information during those higher-level incidents and events which impact the transportation network.

- 10.6 Develop and maintain lists of critical incident contact names and phone numbers, and set up lists, tables and procedures as necessary to prepare TMC for reporting higher-level incidents and event information.
- 10.7 Coordinate with NYSDOT staff, TMC partner agencies, other offices and agencies to gather information related to transportation system disruptions.

## Task 11 - Training and Updating Manuals

#### **SUMMARY**

This task includes work by the Consultant to update standard operating procedures for use in the day-to-day operations of the TMC control center, and to provide necessary training. Some of the operations staff shall require cross-training to ensure effective performance of several TMC tasks. As part of the training requirement, occasional rotation of staff may be necessary.

## **Sub-Task Descriptions**

- 11.1 The Consultant shall update the Standard Operating Procedures (SOP) Manual for use in the TMC control center, as directed. This shall include revised instructions for the System Operators covering events to which INFORM responds, including responses to hardware failures, responses to incidents in the corridor, preparation of sign messages, instigation of diversion signing, operating ramp metering system, operating the traffic signal system in response to events, checking the 511NY system, and related actions.
- 11.2 The Consultant shall provide training to its new System Operators, dispatchers and other Consultant personnel. The training shall use the current NYSDOT operations manual for INFORM. Training shall be provided on an as-needed basis as Consultant staff is phased into the project. Training shall include formal classroom style exercises as well as extensive hands-on training. The training shall provide for testing of trainees to ensure they are fully trained prior to being assigned to the System Operations tasks. It shall also include assignment to the System Operations tasks for at least one (1) week period under the supervision of training System Operator prior to being assigned as an independent System Operator.
- 11.3 The Consultant shall train INFORM System Operators, dispatchers, and field support services personnel to conduct State-approved experimental exercises designed by others, including non-standard procedures and methods to be used in the conduct of research experiment.
- 11.4 Yearly mandatory training classes include, but are not limited to:
  - Right to Know
  - Sexual Harassment
  - Internal Controls
  - Fire Safety
  - Information and Cyber Security
  - Prevention of Workplace Violence

## Task 12 - Transition

#### **SUMMARY**

This task consists of two (2) phases. Phase One (1) will cover the period of implementation of the Contract resulting from this RFP (Contract No. C038048). Phase Two (2) will occur prior to the end of the C038048 Contract when NYSDOT solicits for a future contract to continue services at the INFORM TMC.

#### Phase One (1): Implementation of Contract No. C038048

This task shall only be required if the incumbent Consultant is not awarded the C038048 Contract. To ensure a seamless transition between the incumbent and the newly designated Consultant, NYSDOT has established a transition period of approximately thirty (30) days.

The newly awarded Consultant for Contract No. C038048 shall work with the outgoing, incumbent consultant for Contract No. C037708 to provide the necessary coordination and services to maintain the ITS Operations at INFORM without interruption of services approximately thirty (30) days prior to the end of the incumbent contract or upon approval of the newly awarded Contract. This shall include, but not be limited to, meeting with the current consultant, NYSDOT staff and other stakeholders. To reiterate, the purpose of the transition period will be to establish an organized approach for maintaining uninterrupted services at INFORM.

#### **Sub-Task Descriptions**

- 12.1 The newly designated Consultant shall work with the incumbent consultant to familiarize staff with all needed system operation procedures and formats of all needed reports the newly awarded Consultant shall be able to identify the required system operational requirements.
- 12.2 The newly awarded Consultant shall work with the incumbent consultant to familiarize staff with all control room operations, software, applications, hardware and different incident reporting procedures.
- 12.3 The newly awarded Consultant's Project Manager shall discuss any questions regarding INFORM's daily operations & Operations Manual wit the incumbent Project Manager.
- 12.4 The newly awarded Consultant shall attend meetings with NYSDOT staff, INFORM Maintenance Contractor (ICM), INFORM Engineering Consultant, stakeholders, etc., as deemed appropriate by the NYSDOT Project Manager.
- 12.5 The newly awarded Consultant staff shall work with the incumbent consultant to get an overview of the H.E.L.P. & Parkway Tow contracts and all associated documentation and procedures.
- 12.6 The newly awarded Consultant shall participate with the incumbent consultant and IMC in performing an inventory of all field and INFORM warehouse equipment.
- 12.7 The newly awarded Consultant shall discuss with the incumbent consultant all staffing needs and emergency requirements for coverage of INFORM.
- 12.8 The newly awarded Consultant shall work with the incumbent consultant to provide field support and coordination (i.e., technical support for equipment malfunctions at INFORM).

<u>Phase Two (2): Transition of the Services Provided under Contract No. C038048 to a future TMC</u> Contract

This task shall only be required if the awarded Consultant of Contract No. C038048 does not propose or is not awarded a future TMC contract to continue operations services at the TMC. To ensure a seamless transition between the Consultant for Contract No. C038048 and a future consultant, NYSDOT has established a period of approximately thirty (30) days for transition.

The Consultant for Contract No. C038048 shall construct a thirty (30) day (or as directed by the NYSDOT PM) Transition Plan, ready to execute thirty (30) days prior to completion of Contract No. C038048. The Transition Plan shall ensure a smooth transfer of the operations/management of the INFORM system without interruption of services. The Transition Plan shall be submitted to the NYSDOT PM for approval no later than thee (3) months before expected Contract No. C038048 completion.

## **Sub-Task Descriptions**

- 12.9 The Consultant of Contract No. C038048 shall familiarize the newly awarded consultant of all needed system operation procedures and formats of all needed reports the newly awarded consultant shall be able to identify the required system operations requirements.
- 12.10 The Consultant of Contract No. C038048 shall familiarize the newly awarded consultant with all control room operations, software applications, hardware and different incident reporting procedures.
- 12.11 The Consultant of Contract No. C038048 PM shall answer any questions regarding INFORM's daily operations & Operations Manual that the newly awarded consultant Project Manager may have.
- 12.12 The Consultant of Contract No. C038048 and IMC shall perform an inventory of all field and INFORM warehouse equipment in coordination with the newly awarded consultant.
- 12.13 The Consultant of Contract No. C038048 shall offer the newly awarded consultant staff an overview of the H.E.L.P. & Parkway Tow contracts and all associated documentation and procedures.
- 12.14 The Consultant of Contract No. C038048 shall discuss any staffing concerns and emergency requirements for coverage of INFORM with the newly awarded consultant staff.
- 12.15 The Consultant of Contract No. C038048 shall provide an overview of required field support and coordination (i.e., technical support for equipment malfunctions in the field and at INFORM) to the newly awarded consultant.
- 12.16 The Consultant of Contract No. C038048 shall return all NYSDOT issued property (including, but not limited to, any data or information relative to the work performed under the contract). All equipment (i.e., computers, data storage devices, et.) shall have all evidence of data/information destroyed/removed and/or erased as determined by NYSDOT.

## Attachment 15: Cost Proposal Workbook Mod #1

Attachment 15 <u>Cost Proposal Workbook Mod #1</u>, which contains the RFP's Cost Proposal workbook and instructions, is to be downloaded from the NYSDOT project web site, located at <a href="https://www.dot.ny.gov/business">https://www.dot.ny.gov/business</a>. Click on "Consulting Services", then click on "Opportunities", and then click on the <a href="https://www.dot.ny.gov/business">date</a> to the left of "C038048 Operation of the Region 10 Transportation Management Center (TMC)." There is one Attachment 15: Cost Proposal Workbook <a href="https://www.dot.ny.gov/business">Mod #1</a> for Contract #C038048.

#### Attachment 16: RFP Modifications

Attachment 16, which contains the RFP's Modifications can be found on the NYSDOT project web site, located at <a href="https://www.dot.ny.gov/business">https://www.dot.ny.gov/business</a>. Click on "Consulting Services", then click on "Opportunities", and then click on the <a href="https://www.dot.ny.gov/business">date</a> to the left of "C038048 Operation of the Region 10 Transportation Management Center (TMC)".

# Attachment 17: Staffing Requirements Mod #1

Attachment 17 <u>Staffing Requirements Mod #1</u>, which contains the RFP's Staffing Requirements can be found on the NYSDOT project web site, located at <a href="https://www.dot.ny.gov/business">https://www.dot.ny.gov/business</a></u>. Click on "Consulting Services", then click on "Opportunities", and then click on the <a href="https://www.dot.ny.gov/business">date</a> to the left of "C038048 Operation of the Region 10 Transportation Management Center (TMC)".

# Attachment 18-49 - Site Specific Attachments

Can be found on the NYSDOT project web site, located at <a href="https://www.dot.ny.gov/business">https://www.dot.ny.gov/business</a>. Click on "Consulting Services", then click on "Opportunities", and then click on the <a href="https://www.dot.ny.gov/business">date</a> to the left of "C038048 Operation of the Region 10 Transportation Management Center (TMC)".

- Attachment 18 2022 CCTV Failure Report
- Attachment 19 VMS Survey August 2022
- Attachment 20 Ramp Survey August 2022
- Attachment 21 C005273 Maintenance Budget
- Attachment 22 Help Region 10 September 2022 Report
- Attachment 23 IMCWO Review Contract No. C005273
- Attachment 24 PVMS Inventory 2022-10-14
- Attachment 25 Agile Application Access Procedure
- Attachment 26 How to Create a Work Request
- Attachment 27 Parkway Tow Map
- Attachment 28 2021-08 August INFORM Report
- Attachment 29 2022-10-14 Overnight Road Work
- Attachment 30 2022-10-25 Daily Road Work Report
- Attachment 31 AMBER Alert Guidelines

- Attachment 32 BA17-007 IFB INFORM
- Attachment 33 BA18-005 Parkway Towing IFB 2018
- Attachment 34 C005273 INFORM- Hinck
- Attachment 35 Final WTA Guidance 2020
- Attachment 36 Foundation III ATMS Overview
- Attachment 37 HELP Dispatcher Standard Operating Procedure
- Attachment 38 Help Operator Standard Operating Procedure Updated 5-23-2022
- Attachment 39 INFORM Incident Log
- Attachment 40 INFORM Map 2022
- Attachment 41 INFORM Standard Operating Procedures Updated 10-22-2022
- Attachment 42 NYAlert Manual Everbridge 6-20-2018
- Attachment 43 NYSDOT 811 Standard Operating Procedures
- Attachment 44 NYSDOT CCTV Policy
- Attachment 45 PM Shift Pass Down Debrief 10-8-2022
- Attachment 46 Police Assistance for WZTC Standard Operating Procedures
- Attachment 47 September 2022 Communication Log
- Attachment 48 WhenToWork.com INFORM Monthly Schedule Sample
- Attachment 49 Work Order Process